

and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided: PROVIDED, That no notice of intention is required to sell personal property of less than five hundred dollars in value. If property is sold without notice, such property may not be purchased by a commissioner or an employee of the district, or relatives of commissioners or employees.

The notice of intention to sell shall be published once a week for three consecutive weeks in a newspaper of general circulation in the district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids.

Passed the Senate March 1, 1984.

Passed the House February 15, 1984.

Approved by the Governor March 8, 1984.

Filed in Office of Secretary of State March 8, 1984.

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## CHAPTER 173

[Engrossed Substitute Senate Bill No. 4325]  
UNFAIR CIGARETTE SALES

AN ACT Relating to unfair cigarette sales; amending section 3, chapter 2, Laws of 1983 and RCW 19.91.010; adding a new section to chapter 19.91 RCW; creating new sections; and providing an effective date.

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

Sec. 1. Section 3, chapter 2, Laws of 1983 and RCW 19.91.010 are each amended to read as follows:

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

(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.

(2) "Wholesaler" includes any person who:

(a) Purchases cigarettes directly from the manufacturer, or

(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 chapter.

(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.

(4) "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.

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

(6) "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.

(7) "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.

(8) "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 except 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. The disposition of the manufacturers' cash discount is at the discretion of the wholesaler. Any retailer or wholesaler who actually receives and sells cigarettes with trade or cash discounts shall execute a sworn affidavit and obtain a sworn affidavit from the person granting the discount, whether a manufacturer or wholesaler, which shows: (a) amount or rate of the discount, (b) date the discount was granted, (c) names of the persons granting and receiving the discount, and (d) whether the discount is for cash or trade purposes. Sworn affidavits under this section are maintained for five (5) years and available for inspection by the department of revenue's request. The department of revenue may impose a civil penalty not to exceed \$250 for each failure to maintain affidavits under this section.

Nothing in this section may be construed to require any retailer to obtain affidavits from retail purchasers of cigarettes.

(9) (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 wholesalers "cost of doing business" bears to said wholesalers dollar volume for all products sold by the wholesaler 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 for the purpose of federal income tax reporting for the total operation of his establishment 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, expressed as a percentage and applied to the "basic cost of cigarettes". Any fractional part of a cent amounting to one-tenth of one cent or more in cost to the wholesaler per carton of ten packages of cigarettes shall be rounded off to the next higher cent.

(b) For the purposes of this chapter the "cost of doing business" may not be computed using a percentage less than the overall percentage shown in subsection (9)(a) of this section or in the absence of the filing with the department of revenue 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 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 department of revenue 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.

(10) (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 retailers "cost of doing business" bears to said retailers 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 for the purpose of federal income tax reporting for the total operation of his establishment 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, expressed as a percentage and applied to the "basic cost of cigarettes": 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 subdivision (9) of this section, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer". Any fractional part of a cent amounting to one-tenth of one cent or more in cost to the retailer per carton of ten packages of cigarettes shall be rounded off to the next higher cent.

(b) In the absence of the filing with the department of revenue 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))~~ twelve and five-tenths percent of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of revenue 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, receives 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))~~ twelve and five-tenths percent of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

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

(12) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

NEW SECTION. Sec. 2. There is added to chapter 19.91 RCW a new section to read as follows:

(1) This chapter shall expire on June 30, 1986, unless extended by law indefinitely or for an additional fixed period of time. The legislative budget committee shall cause a performance audit to be conducted of this chapter. The final audit report shall be available to the legislature at least six months prior to the scheduled expiration date. The legislative budget committee shall make objective findings of fact, conclusions, and recommendations as to the continuation, modification, or expiration of this chapter.

(2) In conducting its audit, the legislative budget committee shall consider, but not be limited to, the following areas:

- (a) Definition, adequacy, and methods of determining cigarette pricing;
- (b) The advantages, disadvantages, and effects of including cash discounts in the act's pricing formula; and

(c) The effect that state deregulation of cigarette pricing would have on wholesalers, retailers, and consumers.

(3) The legislative budget committee shall hold meetings and hearings at the times and places it designates to accomplish the purposes of this section. It shall make use of existing legislative facilities and the staff of the senate and house of representatives.

NEW SECTION. Sec. 3. Section 1 of this act is effective July 1, 1984.

Passed the Senate March 1, 1984.

Passed the House February 26, 1984.

Approved by the Governor March 8, 1984.

Filed in Office of Secretary of State March 8, 1984.

## CHAPTER 174

[Engrossed Substitute Senate Bill No. 4329]

### MILWAUKEE ROAD

AN ACT Relating to the Milwaukee Road; adding new sections to chapter 43.51 RCW; adding new sections to chapter 79.08 RCW; creating a new section; and making an appropriation.

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

NEW SECTION. Sec. 1. The purpose of sections 2 through 5 and 6 through 10 of this act is to set forth the state's policy regarding the approximately two hundred thirteen-mile corridor of land purchased by the state from the Milwaukee Railroad Company under section 17(21), chapter 143, Laws of 1981.

NEW SECTION. Sec. 2. There is added to chapter 43.51 RCW a new section to read as follows:

Management control of the portion of the Milwaukee Road corridor, beginning at the western terminus near Easton and concluding at the western end of the tunnel located in the southeast corner of section 20, township 19 north, range 17 east, W.M., approximately twenty-five miles east of the western terminus, shall be transferred by the department of natural resources to the state parks and recreation commission at no cost to the commission.

NEW SECTION. Sec. 3. There is added to chapter 43.51 RCW a new section to read as follows:

The state parks and recreation commission shall do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Manage the corridor as a recreational trail except when closed under section 4 of this act;

(2) Close the corridor to hunting;

(3) Close the corridor to all motorized vehicles except: (a) Emergency or law enforcement vehicles; (b) vehicles necessary for access to utility lines;