

Therefore, I am vetoing section 2, as well as section 1(4) which defines the "marketing area" applicable to section 2, and a portion of section 1(7) that exempts certain "motor fuel refiner-suppliers" from the jurisdiction of this legislation.

In addition, since no administrative remedies are provided in this legislation, I am also vetoing section 16 which is an unneeded reference to the Administrative Procedure Act.

I will be awaiting the results of the Attorney General's investigation of alleged unfair wholesale price discrimination employed by refiner-suppliers between their owner-operated stations and their independent lessee-dealers. This effort is to be completed by December 1, 1986. The civil investigative demand powers of the Attorney General should be effective in evaluating these alleged practices, which were the genesis of the Legislature's concern but which they were unable to document. Until these results are available, the legislation as approved should provide substantial protection for the investments and franchise rights of lessee-dealers.

With the exception of sections 1(4), 1(7) in part, 2 and 16, Engrossed Senate Bill 4620 is approved."

CHAPTER 321

[Engrossed Substitute Senate Bill No. 4627]

CIGARETTE WHOLESALERS AND RETAILERS

AN ACT Relating to cigarette wholesalers and retailers; amending RCW 19.91.010; adding a new section to chapter 19.91 RCW; adding new sections to chapter 82.24 RCW; creating a new section; repealing RCW 19.91.911, 19.91.010, 19.91.020, 19.91.030, 19.91.040, 19.91.050, 19.91.060, 19.91.070, 19.91.080, 19.91.090, 19.91.100, 19.91.110, 19.91.120, 19.91.130, 19.91.140, 19.91.150, 19.91.160, 19.91.170, 19.91.180, 19.91.190, 19.91.900, and 19.91.910; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act.

*Sec. 2. Section 3, chapter 2, Laws of 1983 as amended by section 1, chapter 173, Laws of 1984 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, 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 years and available for inspection by the department of revenue's request. The department of revenue may impose a civil penalty not to exceed two hundred fifty dollars 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))~~ the percentage of the "basic cost of cigarettes" to the wholesaler specified in (c) of this subsection, 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.

(c) For the purposes of (b) of this subsection, the percentage of the basic cost of cigarettes to the wholesaler shall be:

(i) Four percent until July 1, 1987;

(ii) Three and one-half percent from July 1, 1987, until July 1, 1988;

(iii) Three percent from July 1, 1988, until July 1, 1989;

(iv) Two and one-half percent from July 1, 1989, until July 1, 1990;

and

(v) Two percent from July 1, 1990, until July 1, 1991.

(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 ~~((twelve and five-tenths percent))~~ the percentage of the "basic cost of cigarettes" to the retailer specified in (d) of this subsection.

(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 ~~((twelve and five-tenths percent))~~ the percentage of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler" specified in (d) of this subsection.

(d) For the purposes of (b) and (c) of this subsection, the percentage shall be:

(i) Eleven and one-half percent until July 1, 1987;

(ii) Ten and one-half percent from July 1, 1987, until July 1, 1988;

(iii) Nine and one-half percent from July 1, 1988, until July 1, 1989;

(iv) Eight and one-half percent from July 1, 1989, until July 1, 1990;

(v) Seven and one-half percent from July 1, 1990, until July 1, 1991.

(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.

*Sec. 2 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 3. Section 2, chapter 173, Laws of 1984 and RCW 19.91.911 are each repealed.

NEW SECTION. Sec. 4. No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a misdemeanor.

NEW SECTION. Sec. 5. (1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department of revenue shall adopt rules regarding the regulation of the licenses. The department of revenue may refrain from the issuance of any license under this chapter if the department has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department 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 expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department of revenue made pursuant thereto.

NEW SECTION. Sec. 6. A fee of six hundred fifty dollars shall accompany each wholesaler's license application or license renewal application. 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 one hundred fifteen dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, shall be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a master license. The department of revenue shall require each licensed wholesaler to file with the department a bond in an

amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue 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.

NEW SECTION. Sec. 7. A fee of ten dollars shall accompany each retailer's license application or license renewal application. A fee of one additional dollar for each vending machine shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine.

NEW SECTION. Sec. 8. Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity unless the additional appropriate license or licenses are first secured. A violation of this section is a misdemeanor.

NEW SECTION. Sec. 9. (1) The department of revenue shall enforce the provisions of this chapter. The department of revenue may adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter. The department of revenue has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(2) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department of revenue. The department of revenue, upon a finding by same, that the licensee has failed to comply with any provision of this chapter or any rule promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or plural offender, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department of revenue finds the offender has been guilty of wilful and persistent violations, it may revoke the license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the department of revenue at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department of revenue if it appears to the satisfaction of the department of revenue that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder.

(4) A person whose license has been suspended or revoked shall not sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other

premises controlled by the person or others or in any other manner or form whatever.

(5) Any determination and order by the department of revenue, and any order of suspension or revocation by the department of revenue 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. The superior court shall review the order or ruling of the department of revenue and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department of revenue.

NEW SECTION. Sec. 10. All fees and penalties received or collected by the department of revenue pursuant to this chapter shall be paid to the state treasurer, to be credited to the general fund.

NEW SECTION. Sec. 11. A cigarette wholesalers or retailers license issued by the department of licensing under RCW 19.91.130 in good standing on the effective date of this section constitutes a license under section 4 of this act.

NEW SECTION. Sec. 12. Sections 4 through 10 of this act are each added to chapter 82.24 RCW.

NEW SECTION. Sec. 13. A new section is added to chapter 19.91 RCW to read as follows:

No person licensed to sell cigarettes under chapter 82.24 RCW may sell cigarettes below the actual price paid. Violations of this section constitute unfair or deceptive acts or practices under the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 14. The following acts or parts of acts are each repealed:

(1) Section 3, chapter 2, Laws of 1983, section 1, chapter 173, Laws of 1984, section 2 of this 1986 act and RCW 19.91.010;

(2) Section 2, chapter 286, Laws of 1957 and RCW 19.91.020;

(3) Section 3, chapter 286, Laws of 1957 and RCW 19.91.030;

(4) Section 4, chapter 286, Laws of 1957 and RCW 19.91.040;

(5) Section 5, chapter 286, Laws of 1957 and RCW 19.91.050;

(6) Section 6, chapter 286, Laws of 1957 and RCW 19.91.060;

(7) Section 7, chapter 286, Laws of 1957 and RCW 19.91.070;

(8) Section 8, chapter 286, Laws of 1957, section 13, chapter 278, Laws of 1975 1st ex. sess. and RCW 19.91.080;

(9) Section 9, chapter 286, Laws of 1957 and RCW 19.91.090;

(10) Section 10, chapter 286, Laws of 1957 and RCW 19.91.100;

(11) Section 11, chapter 286, Laws of 1957 and RCW 19.91.110;

(12) Section 12, chapter 286, Laws of 1957 and RCW 19.91.120;

(13) Section 13, chapter 286, Laws of 1957, section 14, chapter 278, Laws of 1975 1st ex. sess., section 35, chapter 182, Laws of 1982 and RCW 19.91.130;

(14) Section 4, chapter 2, Laws of 1983 and RCW 19.91.140;

(15) Section 5, chapter 2, Laws of 1983 and RCW 19.91.150;

(16) Section 16, chapter 286, Laws of 1957 and RCW 19.91.160;

(17) Section 17, chapter 286, Laws of 1957 and RCW 19.91.170;

(18) Section 18, chapter 286, Laws of 1957, section 17, chapter 278, Laws of 1975 1st ex. sess., section 4, chapter 16, Laws of 1982 1st ex. sess. and RCW 19.91.180;

(19) Section 19, chapter 286, Laws of 1957, section 4, chapter 172, Laws of 1959, section 2, chapter 107, Laws of 1979 and RCW 19.91.190;

(20) Section 20, chapter 286, Laws of 1957 and RCW 19.91.900; and

(21) Section 21, chapter 286, Laws of 1957, section 5, chapter 16, Laws of 1982 1st ex. sess. and RCW 19.91.910.

NEW SECTION. Sec. 15. Sections 1 and 4 through 14 of this act shall take effect on July 1, 1991.

Passed the Senate March 4, 1986.

Passed the House March 1, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2(8), Substitute Senate Bill No. 4627, entitled:

"AN ACT Relating to cigarette wholesalers and retailers."

I strongly agree with the intent of Substitute Senate Bill No. 4627 to "increase competition by reducing government's role in price setting" of cigarettes. I believe that increased market competition benefits the consumer.

I also agree that the Unfair Cigarette Below Cost Act, the current law which is amended by this bill, should not be terminated in June 1986. Rather, I favor a phase-out of state cigarette price regulation as proposed in Substitute Senate Bill No. 4627, allowing the market to adjust to free market practices over a five-year period. State regulation would then terminate completely in 1991. This approach is consistent with the Legislative Budget Committee's conclusion in its mandated study of the Unfair Cigarette Below Cost Act, "that Chapter 19.91 RCW be extended in its current form and then be automatically phased out over a five-year period."

However, I'm concerned over a potential problem created by the bill's inconsistent treatment of cigarette manufacturers' discounts. Section 2(8) of the bill deletes the provision in current law which specifically authorizes wholesalers to pass cigarette manufacturers' cash discounts through to the retailer. Deleting this express authority granted to wholesalers in section 2(8) of the current law appears to create an ambiguity with regard to section 2(10) which is retained in current law by this bill. Section 2(10) specifies how the retailer shall account to the Department of Revenue for discounts received from cigarette wholesalers. The Department of Revenue would probably be required to rule on this ambiguity with the potential for litigation to resolve the issue.

As a policy matter, if wholesalers are not allowed to pass manufacturers' discounts to retailers, contrary to current law, the effect would be to increase the mandatory wholesale price of cigarettes. This situation would be entirely inconsistent with the intent of Substitute Senate Bill No. 4627, and the Legislative Budget Committee's recommendation, to deregulate state price controls.

In considering a veto of section 2(8), I recognize that the current law pertaining to the treatment of manufacturers' discounts does not have the same effect on all segments of the cigarette wholesaling industry. Nonetheless, the current law has been in effect since 1984, which has already provided a period for the industry to adjust to the discount provision. I believe that the interests of the consumer are best served by retaining the discount provisions of current law, and continuing the move towards market pricing for cigarettes. Therefore, I am vetoing section 2(8) of Substitute Senate Bill No. 4627, which restores the provisions of current law regarding manufacturers' discounts.

With the exception of section 2(8), Substitute Senate Bill No. 4627 has been approved.*

CHAPTER 322

[Reengrossed Substitute Senate Bill No. 4305]

BAIL BONDS

AN ACT Relating to bail bonds; amending RCW 10.19.090; and adding new sections to chapter 10.19 RCW.

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

***NEW SECTION. Sec. 1. A new section is added to chapter 10.19 RCW to read as follows:**

The surety on the appearance bond shall be released from liability when the case against the person is dismissed, the case is deferred, the person is acquitted, or the person is found guilty of the charges made the basis for the appearance bond.

*Sec. 1 was vetoed, see message at end of chapter.

*Sec. 2. Section 1, page 103, Laws of 1867 as last amended by section 1137, Code of 1881 and RCW 10.19.090 are each amended to read as follows:

In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court(;; and)). At the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned or an amount less than that stated in the bond if recommended by the prosecuting attorney and approved by the court or approved by the court on its own motion, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated.

*Sec. 2 was partially vetoed, see message at end of chapter.