

CHAPTER 421B

CIGARETTE SALES

[P]

This chapter not enacted as a part of this title;
transferred from chapter 551A in Code 1993

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421B.1 Short title.

This chapter shall be known and cited as the “*Iowa Unfair Cigarette Sales Act.*”

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.1]

C93, §421B.1

421B.2 Definitions.

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

1. “*Basic cost of cigarettes*” shall mean whichever of one of the two following amounts is lower, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state:

a. The true invoice cost of cigarettes to the wholesaler or retailer, as the case may be.

b. The lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased.

2. “*Cigarettes*” shall mean and include 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.

3. a. “*Cost to the retailer*” shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer’s purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph “b”.

4. a. “*Cost to wholesaler*” shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

5. “*Person*” shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. “*Retailer*” means any person who is engaged in this state in the business of selling, or

offering to sell, cigarettes at retail. For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. “Sale” and “sell” shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. “Sell at retail”, “sale at retail” and “retail sales” shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller’s business.

9. “Sell at wholesale”, “sale at wholesale”, and “wholesale sales” shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler’s business to a retailer for the purpose of resale.

10. “Wholesaler” means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.2]

83 Acts, ch 165, §3 – 5

C93, §421B.2

2001 Acts, ch 116, §5; 2007 Acts, ch 17, §1, 2, 12; 2011 Acts, ch 34, §165

[T] Subsections 1 and 6 amended

421B.3 Sales at less than cost — penalties.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a simple misdemeanor.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to the wholesaler or retailer as defined by this chapter shall be evidence of a violation of this chapter.

3. a. The following civil penalties shall be imposed for a violation of this section:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

b. Each day a violation occurs counts as a new violation for purposes of this subsection.

c. The civil penalty imposed under this subsection is in addition to the penalty imposed under subsection 1. Penalties collected under this subsection shall be deposited into the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.3]

C93, §421B.3

2007 Acts, ch 186, §32; 2009 Acts, ch 133, §134

421B.4 Combination sales.

In all offers for sale or sales involving cigarettes and any other item at a combined price, and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler’s or retailer’s combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions: If any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in section 421B.2, subsection 8.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.4]

C93, §421B.4

421B.5 Sales by a wholesaler to a wholesaler.

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in the selling price to the latter, the cost to the wholesaler, as defined by section 421B.2, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.5]
C93, §421B.5

421B.6 Sales exceptions.

The provisions of this chapter shall not apply to a sale at wholesale or a sale at retail made as follows:

1. In an isolated transaction.
2. Where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.
3. Where cigarettes are offered for sale or are sold as imperfect or damaged, and the offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale or to be sold.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.6]
C93, §421B.6
2009 Acts, ch 41, §123

421B.7 Transactions permitted to meet lawful competition.

1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this chapter. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in this chapter. The price of cigarettes offered for sale, or sold under the exceptions specified in section 421B.6 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 or forced sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 421B.8, subsection 2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.7]
C93, §421B.7

421B.8 Cost determined.

1. *Admissible evidence.* In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this chapter purchased the cigarettes involved in the complaint before the court, 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 fides 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. *Cost survey.* Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this chapter is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this chapter to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation,

labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance and other expenses.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.8]
C93, §421B.8

421B.9 Sales outside ordinary channels of business — effect.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside of the ordinary channels of trade.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.9]
C93, §421B.9

421B.10 Injunction.

The director of revenue, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney fees, shall be entitled to recover from the defendant the actual damages sustained by the plaintiff.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.10]
C93, §421B.10; 2003 Acts, ch 145, §286

421B.11 Director of revenue — powers and duties.

The director of revenue may adopt rules for the enforcement of this chapter and the director is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as the director shall deem necessary and it shall be permissible to use such cost survey as provided in section 421B.7, subsection 2, and section 421B.8, subsection 2.

The director of revenue may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules of the director promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Judicial review of the actions of the director may be sought in accordance with chapter 17A and section 423.38.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.11]
C93, §421B.11

2003 Acts, ch 44, §114; 2003 Acts, ch 108, §71; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §183, 205