

ENROLLMENT(S)



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COUNCIL OF THE DISTRICT OF COLUMBIA
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20004

I. TRANSMITTAL OF ENROLLED LEGISLATION

Short Title: Cigarette Sales Below Cost Act of 1994

Bill #10-79

Act #

Date Transmitted to LSD:

RECEIVED
'93 JAN -5 P4:19

Received by LSD:

LEGISLATIVE SERVICE

cc: Councilmember Ray
cc: Codification Counsel

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(with attachment)
(with attachment)

Please notify me of any error/comment within 24 hours.

II. CLEARANCE OF ENROLLED LEGISLATION

Charlotte Budenz-Hudson
Legislative Counsel

1-4-94
Date

John E McNeal
Codification Counsel

1-5-94
Date

M
Office of the Secretary

1-5-94
Date

III. CLEARANCE OF CORRESPONDENCE BY LSU

Letter(s) to the Mayor

Date

Letter(s) to Congress

Date

COUNCIL OF THE DISTRICT OF COLUMBIA

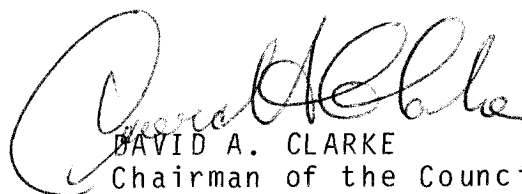
NOTICE

D.C. LAW 10-89

"Cigarette Sales Below Cost Act of 1994".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 10-79 on first and second readings, December 7, 1993, and January 4, 1994, respectively. Following the signature of the Mayor on January 21, 1994, this legislation was assigned Act No. 10-166, published in the February 4, 1994, edition of the D.C. Register, (Vol. 41 page 489) and transmitted to Congress on January 26, 1994 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 10-89, effective March 22, 1994.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 26

February 1,2,3,4,7,8,9,10,11,22,23,24,25,28

March 1,2,3,4,7,8,9,10,11,14,15,16,17,18,21

AN ACT

D.C. ACT 10-166

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JAN. 21, 1994

To amend title 28 of the District of Columbia Code to prohibit the sale, or offer or inducement to sell, below cost of any cigarette product in the wholesale or retail trades.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Cigarette Sales Below Cost Act of 1994".

Sec. 2. Title 28 of the District of Columbia Code is amended as follows:

(a) The table of contents for the title is amended by inserting the following phrase: "45A §§28-4521 to 28-4528."

(b) A new Chapter 45A is added to read as follows:
"Chapter 45A. Cigarette Sales Below Cost.

"Sec.

- "§ 28-4521. Definitions.
- "§ 28-4522. Prohibitions.
- "§ 28-4523. Exceptions.
- "§ 28-4524. Unfair trade practice.
- "§ 28-4525. Penalties.
- "§ 28-4526. Effect of judgment.
- "§ 28-4527. Rulemaking.

"§ 28-4521. Definitions.

"For the purposes of this chapter, the term:

"(1) "Cash and carry" means the purchaser is responsible for the transportation of a purchased article or product to the purchaser's designated destination.

"(2) "Cigarettes" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco. The term "cigarettes" does not include cigars.

"(3) "Cost" means the invoice or replacement cost, whichever is lower, of cigarettes to the retailer or wholesaler, plus:

"(A) The cost of doing business by the retailer or wholesaler; or

"(B) In the absence of proof of the cost of doing business, a markup of 2% on the total of the invoice or replacement cost,

New Section
28-4521

and the face value of any applicable excise taxes, shall be prima facie proof of the cost of doing business with regard to cigarettes being sold at wholesale; and

"(C) In the absence of proof of the cost of doing business, a markup of 8% on the total of the invoice or replacement cost shall be prima facie proof of the cost of doing business with regard to cigarettes being sold at retail.

"With regard to any determination of the cost of cigarettes to a wholesaler or retailer, a fractional part of a cent equal to 1/10 of 1% or more shall be rounded off to the next higher cent. Except as provided in § 28-4522, discounts granted for cash payments or electronic fund transfers shall not be used to reduce cost determinations.

"Notwithstanding § 28-4522, articles or products given gratis or payments made to a retailer or wholesaler for display, advertising, or promotion purposes shall not be considered in determining the cost of the articles or products.

"(4) "Retailer" means any person engaged in the business of making retail sales of cigarettes within the District of Columbia at a store, stand, booth, or concession, through vending machines, or otherwise. If the person is engaged in the business of making both retail and wholesale sales of cigarettes, the term applies only to the retail sales of cigarettes portion of the business.

"(5) "Wholesaler means a person who purchases cigarettes directly from a manufacturer. The term "wholesaler" includes a person, who as a subwholesaler, purchases cigarettes from another wholesaler solely for the purpose of bonafide resale to retailers other than those directly or indirectly owned, affiliated, or controlled by him, and services the retailers by maintaining an established place of business for the sale of cigarettes, including warehouse facilities, adequate inventory, proper accounting records, and necessary equipment and vehicles for the storage and distribution of cigarettes.

"§ 28-4522. Prohibitions.

"(a) It shall be unlawful for any individual, corporation, joint stock company, business trust, partnership, business association, or other legal entity engaged in business within the District of Columbia, for the purpose of injuring competitors or destroying competition, to sell, offer for sale, or advertise for sale cigarettes for less than cost, either at retail or wholesale, or to give, offer to give, or advertise an intent to give away any cigarettes for the purpose of injuring competitors or destroying competition.

"(b) Notwithstanding subsection (a) of this section and § 28-4521(2), the presumptive wholesale markup of 2% may be reduced by 1/10 of 1% for the wholesale sale of cigarettes on a cash and carry basis.

"§ 28-4523. Exceptions.

"The prohibitions of § 28-4522 shall not apply to any sale made:

"(1) In closing out in good faith the wholesaler's or retailer's stock, or any part thereof, for the purpose of discontinuing the wholesaler's or retailer's trade in any such stock, and in the case of the sale of seasonal goods or the bona fide sale of perishable goods to prevent loss to the wholesaler or retailer by spoilage or depreciation, if adequate notice is given to the public;

"(2) When the goods are damaged or deteriorated in quality and notice is given to the public;

New Section
28-4522

New Section
28-4523

"(3) By a person affected by this chapter acting under the order of any court of competent jurisdiction;

"(4) In an endeavor made in good faith to meet the legal prices of a competitor selling the same article or product or service in the same locality or trade area;

"(5) When the product or article is sold upon the final liquidation of a business of the wholesaler or retailer;

"(6) Where the article or product is sold for charitable purposes or to relief agencies; or

"(7) Where the article or product is sold on contract to any agency or department of the District of Columbia or of the federal, any state, or other local government.

"§ 28-4524. Unfair trade practice.

"The secret payment or allowance of rebates, refunds, commissions, or unearned discounts for cigarettes, whether in the form of money or otherwise, or secretly extending to certain purchasers of cigarettes special services or privileges not extended to all purchasers of cigarettes, upon like terms and conditions, to the injury of a competitor, and where such payment or allowance tends to destroy competition, is an unfair trade practice. Any wholesaler or retailer of cigarettes resorting to such an unfair trade practice shall be subject to the penalties provided in § 28-4525.

New Section
28-4524

"§ 28-4525. Penalties.

"(a) Injunctive relief. Any appropriate agency of the District of Columbia or any person injured by any violation of the provisions of this chapter, or any trade association representative of such a person, may bring an action in the Superior Court of the District of Columbia to prevent, restrain, or enjoin such a violation. In such an action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, in addition to equitable and injunctive relief, the court shall award the plaintiff as monetary relief threefold the total damage sustained by the person, and, as determined by the court, the costs of suit, including reasonable attorney's fees.

New Section
28-4525

"(b) Monetary relief. In the event no injunctive relief is sought or required, any person injured by a violation of the provisions of this chapter may maintain an action for damages alone in the Superior Court of the District of Columbia. In such an action, the court shall award the plaintiff as monetary relief threefold the total damage sustained by the person, and, as determined by the court, the costs of suit, including reasonable attorney's fees.

"(c) Suspension or revocation of license.

"The Mayor may suspend or revoke any business license or permit of any wholesaler or retailer engaged in the retail or wholesale trade of cigarettes upon sufficient cause appearing of the violation of any provision of this chapter. Such a wholesaler or retailer shall be entitled to due process, including notice and the opportunity for a hearing before the appropriate agency of the District of Columbia. Any suspension shall be for a period not to exceed 5 consecutive business days. A revocation shall be issued only upon a finding by the appropriate agency of the District of Columbia that the affected business license or permit holder is guilty of willful and persistent violations of the provisions of this chapter. Any person who has had a business license or permit revoked, pursuant to the terms of this section, may apply to the appropriate

agency of the District of Columbia for reinstatement only after the expiration of 1 year. Any suspension or revocation issued pursuant to this section shall be reviewable by the Superior Court of the District of Columbia.

"§ 28-4526. Effect of judgment.

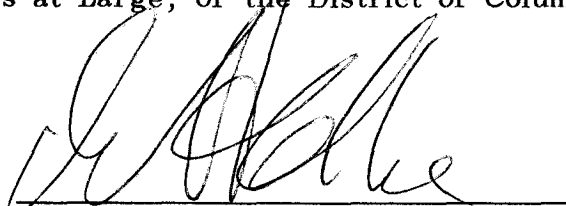
"A final judgment or decree determining that a person has violated this chapter in an action brought by the District of Columbia under § 28-4522 or § 28-4524, other than a consent judgment or decree entered before any testimony at trial has been taken or entered pursuant to a plea of nolo contendere, shall be prima facie evidence against the person in any other action against the person under § 28-4525(b) and (c) as to all matters with respect to which the judgment or decree would be an estoppel between the parties to that judgment or decree.

"§ 28-4527. Rulemaking.

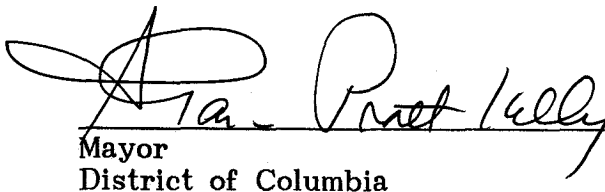
"(a) The Mayor may issue proposed rules, pursuant to subchapter I of chapter 15 of title 1, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

"(b) The Mayor may issue emergency rules, without prior Council approval, which shall be effective for not more than 90 days."

Sec. 3. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED : January 21, 1994

New Section
28-4526

New Section
28-4527



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 10-79

X Item on Consent Calendar

X ACTION & DATE: Adopted First Reading, 12-7-93

X VOICE VOTE: Approved

Recorded vote on request

Absent: Chavous, Smith and Nathanson

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 4 times). Rows include CHMN. CLARKE, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: January 5, 1994

X Item on Consent Calendar

X ACTION & DATE: Adopted Final Reading, 1-4-94

X VOICE VOTE: Approved

Recorded vote on request

Absent: Evans

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 4 times). Rows include CHMN. CLARKE, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: January 5, 1994

Item on Consent Calendar

ACTION & DATE:

VOICE VOTE:

Recorded vote on request

Absent:

ROLL CALL VOTE: - RESULT

Table with 16 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 4 times). Rows include CHMN. CLARKE, BARRY, BRAZIL, CHAVOUS, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date