

2015 Regular Session

HOUSE BILL NO. 477

BY REPRESENTATIVE MONTOUCET

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TOBACCO/TOBACCO PRODUCTS: Provides for minimum pricing of cigarettes

1 AN ACT

2 To amend and reenact R.S. 26:901(14) through (29), 909(B)(1)(b) and (2), and 924 and to
3 enact R.S. 26:901(30) through (34) and 909(A)(6), relative to cigarette pricing; to
4 provide for the computation for minimum wholesale and retail cigarette pricing; to
5 provide for eligibility requirements; to authorize the commissioner to suspend or
6 revoke permits for failure to pay certain taxes; to provide relative to penalties; to
7 provide for definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 26:901(14) through (29), 909(B)(1)(b) and (2), and 924 are hereby
10 amended and reenacted and R.S. 26:901(30) through (34) and 909(A)(6) are hereby enacted
11 to read as follows:

12 §901. Definitions

13 * * *

14 (14) "Rebate or coupon" means any value-added promotion, preferred
15 customer promotion, periodic promotion, off-invoice allowance, specially marked
16 one-packed deals, special price promotions, market leader promotions, value leader
17 promotions, or any other program or incentive whereby a wholesaler or retailer is
18 required, either directly or indirectly, to pass an incentive on to a consumer and is
19 reimbursed, either directly or indirectly, by a manufacturer, importer, or sales entity
20 affiliate.

1 (15) "Replacement cost" means the cost per unit at which the merchandise
2 sold or offered for sale could have been bought by the seller at any time within thirty
3 days prior to the date of sale or the date upon which it is offered for sale by the seller
4 if bought in the same quantity as the seller's last purchase of the merchandise.

5 (16) "Retail dealer" includes every dealer other than a wholesale dealer, or
6 manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products,
7 alternative nicotine products, or vapor products, irrespective of quantity or the
8 number of sales. If any person is engaged in the business of making sales both at
9 retail and wholesale, "retailer" shall apply only to the retail portion of the business.

10 ~~(15)~~(17) "Sale" or "sell" means any transfer, exchange, or barter in any
11 manner or by any means for any consideration. The term shall include distributing
12 or shipping product in connection with a sale. References to a sale "in" or "into" a
13 state refer to the state of the destination point of the product in the sale, without
14 regard to where title was transferred. References to sale "from" a state refer to the
15 sale of cigarettes that are located in that state to the destination in question without
16 regard to where title was transferred.

17 ~~(16)~~(18) "Sales entity affiliate" means an entity that sells cigarettes that it
18 acquires directly from a manufacturer or importer and is affiliated with that
19 manufacturer or importer as established by documentation received directly from
20 that manufacturer or importer to the satisfaction of the attorney general. Entities are
21 affiliated with each other if one, directly or indirectly through one or more
22 intermediaries, controls or is controlled by or is under common control with the
23 other.

24 ~~(17)~~(19) "Secretary" means the secretary of the Department of Revenue and
25 includes any of his duly authorized assistants.

26 ~~(18)~~(20) "Self-service display" means any display that contains tobacco
27 products, alternative nicotine products, or vapor products, and is located in an area
28 openly accessible to the retail dealer's customers and from which such customers can
29 readily access tobacco products, alternative nicotine products, or vapor products

1 without the assistance of a salesperson. A display case that holds tobacco products,
2 alternative nicotine products, or vapor products behind locked doors does not
3 constitute a self-service display for purposes of this Chapter.

4 (21) "Sell at retail", "sales at retail", and "retail sale" means any transfer for
5 valuable consideration, made in the ordinary course of trade or in the usual conduct
6 of the seller's business, of title to tangible movable property to the purchaser.

7 (22) "Sell at wholesale", "sales at wholesale", and "wholesale sales" mean
8 any transfer for valuable consideration, made in the ordinary course of trade or the
9 usual conduct of the seller's business, of title to tangible movable property to the
10 purchaser for purposes of resale.

11 ~~(19)~~(23) "Smokeless tobacco" means any finely cut, ground, powdered, or
12 leaf tobacco that is intended to be placed in the oral or nasal cavity.

13 ~~(20)~~(24) "Smoking tobacco" includes granulated, plug cut, crimp cut, ready
14 rubbed, and any other kind and form of tobacco prepared in such manner as to be
15 suitable for smoking in pipe or cigarette.

16 ~~(21)~~(25) "Stamp" means the impression, device, stamp, label, or print
17 manufactured or printed as prescribed by the secretary by the use of which the tax
18 levied hereunder is paid. By way of extension, and not limitation, the term "stamp"
19 means any impression or character affixed to or which shall be stamped upon
20 commodities by metered stamping machine or device by use of which the tax levied
21 hereunder is paid.

22 ~~(22)~~(26) "Stamping agent" means a dealer that is authorized to affix tax
23 stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any
24 dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S.
25 47:841 et seq. on cigarettes.

26 ~~(23)~~(27) "State directory" or "directory" means the directory compiled by the
27 attorney general under R.S. 13:5073, or, in the case of reference to another state's
28 directory, the directory compiled under the similar law in that other state.

1 ~~(24)~~(28) "Tobacconist" means any bona fide tobacco retailer engaged in
2 receiving bulk smoking tobacco for the purpose of blending such tobacco for retail
3 sale at a particular retail outlet where fifty percent or more of the total purchases for
4 the preceding twelve months were purchases of tobacco products, excluding
5 cigarettes.

6 ~~(25)~~(29) "Tobacco product" means any cigar, cigarette, smokeless tobacco,
7 or smoking tobacco.

8 (30) "Trade discount" means any discount immediately recognized by a
9 wholesale dealer from the manufacturer, importer, or sales entity affiliate or by a
10 retail dealer from a manufacturer, importer, sales entity affiliate, or wholesale dealer.
11 Trade discount does not include any off-invoice allowances that a wholesale dealer
12 is required, either directly or indirectly, to pass on to a retail dealer or any rebates or
13 coupons as defined in this Chapter that a wholesale or retail dealer is required to
14 offer to the end consumer, but is reimbursed for, either directly or indirectly, by
15 either the manufacturer, importer, sales entity affiliate, or wholesale dealer.

16 ~~(26)~~(31) "Vapor product" means any non-combustible product containing
17 nicotine or other substances that employs a heating element, power source, electronic
18 circuit, or other electronic, chemical or mechanical means, regardless of shape or
19 size, that can be used to produce vapor from nicotine in a solution or other form.
20 "Vapor product" includes any electronic cigarette, electronic cigar, electronic
21 cigarillo, electronic pipe, or similar product or device and any vapor cartridge or
22 other container of nicotine in a solution or other form that is intended to be used with
23 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or
24 similar product or device. "Vapor product" does not include any of the following:

25 (a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).

26 (b) Device pursuant to 21 U.S.C. 321(h).

27 (c) Combination product described in 21 U.S.C. 353(g).

28 ~~(27)~~(32) "Vending machine" means any mechanical, electric, or electronic
29 self-service device which, upon insertion of money, tokens, or any other form of

1 payment, automatically dispenses tobacco products, alternative nicotine products, or
2 vapor products.

3 ~~(28)~~(33) "Vending machine operator" means any person who controls the use
4 of one or more vending machines as to the supply of cigarettes or any tobacco
5 products in the machine or the receipts from cigarettes vended through such
6 machines.

7 ~~(29)~~(34) "Wholesale dealer" means a dealer whose principal business is that
8 of a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail
9 dealers for purpose of resale, who is a bona fide wholesaler, and fifty percent of
10 whose total tobacco sales are to retail stores other than its own or its subsidiaries
11 within Louisiana. Wholesale dealer shall include any person in the state who
12 acquires cigarettes solely for the purpose of resale in vending machines, provided
13 such person services fifty or more cigarette vending machines in Louisiana other
14 than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps
15 as of January 1, 1974. If any person is engaged in the business of making sales at
16 both wholesale and retail, "wholesaler" shall apply only to the wholesale portion of
17 the business.

18 * * *

19 §909. General requirements of eligibility

20 A. The commissioner may suspend a permit previously issued or may refuse
21 to grant a permit if, after a hearing and by a preponderance of the evidence, it is
22 proven that the permittee, or an employee or agent thereof, or applicant either:

23 * * *

24 (6) Has failed to pay any sales taxes due to the state.

25 B.(1) The commissioner may refuse to grant or shall suspend any permit
26 previously granted until such time as the applicant may supply evidence to the
27 contrary, in any of the following circumstances:

28 * * *

1 (b) When the applicant has violated the terms and provisions of the Unfair
2 Sales Law as it applies to tobacco products as provided in ~~R.S. 51:421~~ R.S. 26:924,
3 or has violated the provisions of this Chapter or Chapter 8 of Subtitle II of Title 47
4 of the Louisiana Revised Statutes of 1950, or any rules, regulations, or instructions
5 issued in connection therewith.

6 (2) Information concerning the Unfair Sales Law as it pertains to tobacco
7 products shall be governed by ~~R.S. 51:421~~ R.S. 26:924.

8 * * *

9 §924. Issuance of minimum price of cigarettes

10 A. The commissioner shall ~~issue to all bona fide Louisiana wholesale~~
11 ~~tobacco dealers and Louisiana retail dealers~~ post on the website maintained by the
12 office of alcohol and tobacco control the minimum wholesale and retail prices
13 schedule of each cigarette brand within ~~fourteen~~ five business days of the effective
14 date of the manufacturer's, importer's, or sales entity affiliate's price change. ~~The~~
15 ~~minimum wholesale and retail cigarette price shall be computed as set forth in R.S.~~
16 ~~51:421 through 424.~~

17 B. Every manufacturer, importer, or sales entity affiliate of cigarettes sold
18 within Louisiana shall notify the commissioner, in writing, of the price change to any
19 cigarette brand by the twentieth day of the month preceding the effective date of the
20 price change, and all price changes, including trade discounts, rebates, or coupons
21 as defined in this Chapter shall be valid for at least thirty days. Any price change not
22 provided to the commissioner as required herein shall not be included in the
23 commissioner's price schedule and shall not be computed in determining the
24 minimum wholesale and retail prices for the product. No wholesale or retail dealer
25 shall sell any cigarette brand at any price less than allowed in the minimum pricing
26 schedule provided by the commissioner.

27 C. The minimum wholesale and retail price of all cigarettes sold within
28 Louisiana shall be computed as follows:

1 (1) "Cost to the wholesaler" means the invoice cost or the replacement cost
2 of the merchandise to the wholesaler, whichever is lower:

3 (a) Less all trade discounts except customary discounts for cash and
4 discounts from the state or any governmental agency allowed for the payment of
5 collection of any taxes;

6 (b) Plus the cost of doing business by the wholesaler, including freight
7 charges and cartage costs presumed to be one percent of the invoice cost of
8 cigarettes, and any fraction of cent shall be rounded to the next highest cent;

9 (c) Plus any existing tobacco stamp excise tax;

10 (d) Plus a markup of three percent; and

11 (e) Less any coupons or rebates, as defined in this Chapter which are
12 required, either directly or indirectly, to be passed on to the retail dealer.

13 (2) "Cost to the retailer" means the invoice cost or the replacement cost of
14 the merchandise to the retailer, whichever is lower:

15 (a) Less all trade discounts;

16 (b) Plus the cost of doing business by the retailer including freight charges
17 and cartage, presumed to be one percent of the invoice cost of cigarettes, and any
18 fraction of cent shall be rounded to the next highest cent;

19 (c) Plus a markup of six percent; and

20 (d) Less any coupons, rebates, or other incentives, as defined in this Chapter,
21 which are required, either directly or indirectly, to be passed on to the retail dealer
22 and are ultimately refunded to the retailer by the manufacturer, importer, sales entity
23 affiliate, or wholesale dealer.

24 (3) In determining "cost to the retailer" in those cases where the retailer buys
25 at wholesale and receives the wholesalers' profits and discounts on merchandise to
26 be sold at retail, both the wholesale markup of three percent and the retail markup
27 of six percent, in the absence of proof of a lesser cost, shall be added to cover a
28 proportionate part of the cost of doing business.

1 (4) When one or more items are advertised, offered for sale, or sold with one
 2 or more other items at a combined price, or are advertised, offered as a gift, or given
 3 with the sale of one or more items, each and all of the items shall for the purposes
 4 of this Subsection be considered, advertised, offered for sale, or sold, and the price
 5 of each item shall be governed by the provisions set forth herein.

6 (5) "Cost to the retailer" and "cost to the wholesaler" as defined by this
 7 Chapter means bona fide costs. Purchases made by retailers and wholesalers at
 8 prices which cannot be justified by prevailing market conditions within this state
 9 shall not be used in determining "cost to the retailer" and "cost to the wholesaler".

10 (6) Failure to comply with these provisions may result in penalties up to and
 11 including the suspension or revocation of the wholesale or retail dealer's permit.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 477 Engrossed

2015 Regular Session

Montoucet

Abstract: Provides relative to minimum cigarette pricing and related definitions, requirements, procedures, and penalties.

Present law provides for definitions relative to tobacco products.

Proposed law retains present law and adds definitions for the following terms: "rebate or coupon", "replacement cost", "retail sales", "trade discount" and "wholesale sales".

Proposed law provides that if any person is engaged in the business of making sales both at retail and wholesale, "retailer" shall only apply to the retail portion of the business and "wholesaler" shall only apply to the wholesale portion of the business.

Proposed law authorizes the commissioner of ATC to suspend or revoke the permit of any dealer that fails to pay any sales taxes due to the state.

Present law requires the commissioner to issue the minimum wholesale and retail prices to all bona fide La. wholesale tobacco and retail dealers within 14 days of the manufacturer's price change, and requires the price to be computed in accordance with present law provisions.

Proposed law requires the commissioner to post the minimum wholesale and retail price schedule of each cigarette brand on a website maintained by ATC within five business days of the effective date of the manufacturer's, importer's, or sales entity affiliate's price change.

Proposed law requires every manufacturer, importer, or sales entity affiliate of cigarettes sold in La. to notify the commissioner of any price change in writing by the 20th day of each

month preceding the effective date of the price change, including any discounts or rebates, which shall be valid for at least 30 days.

Proposed law provides that any price change that is not provided to the commissioner as required by proposed law is prohibited from being included in the price change schedule or computed to determine the minimum prices of the product which cannot be sold for a price less than what is allowed in the minimum pricing schedule.

Proposed law provides for the computation for minimum wholesale and retail prices as "costs to the retailer" and "cost to the wholesaler" for all cigarettes sold in La.

Proposed law provides for regulations for items that are advertised, offered for sale or given as a gift, sold with one or more other items for a combined price, or given with the sale of one or more items.

Provides for penalties for violations of proposed law.

(Amends R.S. 26:901(14)-(29), 909(B)(1)(b) and (2), and 924; Adds R.S. 26:901(30)-(34) and 909(A)(6))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Remove the phrase "for purposes of resale" from the definition of "sell at retail", "sales at retail", and "retail sale" as it relates to the title to tangible movable property that is transferred to the purchaser.