

2015 Regular Session

HOUSE BILL NO. 477

BY REPRESENTATIVE MONTOUCET

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  
30           without the assistance of a salesperson. A display case that holds tobacco products,

1 alternative nicotine products, or vapor products behind locked doors does not  
2 constitute a self-service display for purposes of this Chapter.

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

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

10 ~~(19)~~(23) "Smokeless tobacco" means any finely cut, ground, powdered, or  
11 leaf tobacco that is intended to be placed in the oral or nasal cavity.

12 ~~(20)~~(24) "Smoking tobacco" includes granulated, plug cut, crimp cut, ready  
13 rubbed, and any other kind and form of tobacco prepared in such manner as to be  
14 suitable for smoking in pipe or cigarette.

15 ~~(21)~~(25) "Stamp" means the impression, device, stamp, label, or print  
16 manufactured or printed as prescribed by the secretary by the use of which the tax  
17 levied hereunder is paid. By way of extension, and not limitation, the term "stamp"  
18 means any impression or character affixed to or which shall be stamped upon  
19 commodities by metered stamping machine or device by use of which the tax levied  
20 hereunder is paid.

21 ~~(22)~~(26) "Stamping agent" means a dealer that is authorized to affix tax  
22 stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any  
23 dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S.  
24 47:841 et seq. on cigarettes.

25 ~~(23)~~(27) "State directory" or "directory" means the directory compiled by the  
26 attorney general under R.S. 13:5073, or, in the case of reference to another state's  
27 directory, the directory compiled under the similar law in that other state.

28 ~~(24)~~(28) "Tobacconist" means any bona fide tobacco retailer engaged in  
29 receiving bulk smoking tobacco for the purpose of blending such tobacco for retail  
30 sale at a particular retail outlet where fifty percent or more of the total purchases for

1 the preceding twelve months were purchases of tobacco products, excluding  
2 cigarettes.

3 ~~(25)~~(29) "Tobacco product" means any cigar, cigarette, smokeless tobacco,  
4 or smoking tobacco.

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

13 ~~(26)~~(31) "Vapor product" means any non-combustible product containing  
14 nicotine or other substances that employs a heating element, power source, electronic  
15 circuit, or other electronic, chemical or mechanical means, regardless of shape or  
16 size, that can be used to produce vapor from nicotine in a solution or other form.  
17 "Vapor product" includes any electronic cigarette, electronic cigar, electronic  
18 cigarillo, electronic pipe, or similar product or device and any vapor cartridge or  
19 other container of nicotine in a solution or other form that is intended to be used with  
20 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or  
21 similar product or device. "Vapor product" does not include any of the following:

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

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

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

25 ~~(27)~~(32) "Vending machine" means any mechanical, electric, or electronic  
26 self-service device which, upon insertion of money, tokens, or any other form of  
27 payment, automatically dispenses tobacco products, alternative nicotine products, or  
28 vapor products.

29 ~~(28)~~(33) "Vending machine operator" means any person who controls the use  
30 of one or more vending machines as to the supply of cigarettes or any tobacco

1 products in the machine or the receipts from cigarettes vended through such  
2 machines.

3 ~~(29)~~(34) "Wholesale dealer" means a dealer whose principal business is that  
4 of a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail  
5 dealers for purpose of resale, who is a bona fide wholesaler, and fifty percent of  
6 whose total tobacco sales are to retail stores other than its own or its subsidiaries  
7 within Louisiana. Wholesale dealer shall include any person in the state who  
8 acquires cigarettes solely for the purpose of resale in vending machines, provided  
9 such person services fifty or more cigarette vending machines in Louisiana other  
10 than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps  
11 as of January 1, 1974. If any person is engaged in the business of making sales at  
12 both wholesale and retail, "wholesaler" shall apply only to the wholesale portion of  
13 the business.

14 \* \* \*

15 §909. General requirements of eligibility

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

19 \* \* \*

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

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

24 \* \* \*

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

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

3 \* \* \*

4 §924. Issuance of minimum price of cigarettes

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

12 B. Every manufacturer, importer, or sales entity affiliate of cigarettes sold  
13 within Louisiana shall notify the commissioner, in writing, of any price change to  
14 any cigarette brand resulting from trade discounts, rebates, or coupons by the twenty-  
15 eighth day of the month preceding the effective date of the price changes resulting  
16 from trade discounts, rebates, or coupons and any such price change shall be valid  
17 for at least thirty days. Any price change not provided to the commissioner as  
18 required herein shall not be included in the commissioner's price schedule and shall  
19 not be computed in determining the minimum retail prices for the product. No  
20 wholesale or retail dealer shall sell any cigarette brand at any price less than allowed  
21 in the minimum pricing schedule provided by the commissioner.

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

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

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

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

4           **(c) Plus any existing tobacco stamp excise tax;**

5           **(d) Plus a markup of three percent; and**

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

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

10          **(a) Less all trade discounts;**

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

14          **(c) Plus a markup of six percent; and**

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

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

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

29          **(5) "Cost to the retailer" and "cost to the wholesaler" as defined by this**  
30          **Chapter means bona fide costs. Purchases made by retailers and wholesalers at**

1           prices which cannot be justified by prevailing market conditions within this state  
2           shall not be used in determining "cost to the retailer" and "cost to the wholesaler".  
3                   (6) Failure to comply with these provisions may result in penalties up to and  
4           including the suspension or revocation of the wholesale or retail dealer's permit.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_