

CHAPTER 6

UNFAIR CIGARETTE SALES ACT RULES

Authority

N.J.S.A. 56:7-31.

Source and Effective Date

R.2009 d.368, effective November 13, 2009.
See: 41 N.J.R. 2636(a), 41 N.J.R. 4463(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 6, Unfair Cigarette Sales Act Rules, expires on November 13, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 6, Unfair Cigarette Sales Act, was adopted and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1984 d.97, effective March 19, 1984. See: 16 N.J.R. 228(a), 16 N.J.R. 746(b).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1989 d.199, effective March 14, 1989. See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1994 d.185, effective March 14, 1994. See: 26 N.J.R. 760(a), 26 N.J.R. 1696(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, Unfair Cigarette Sales Act, was readopted as R.1999 d.79, effective February 4, 1999. See: 30 N.J.R. 3168(a), 31 N.J.R. 669(a).

Chapter 6, Unfair Cigarette Sales Act, was readopted as R.2004 d.239, effective May 28, 2004. See: 36 N.J.R. 933(a), 36 N.J.R. 3302(a).

Chapter 6, Unfair Cigarette Sales Act, was readopted as R.2009 d.368, effective November 13, 2009. As a part of R.2009 d.368, Chapter 6 was renamed Unfair Cigarette Sales Act Rules, effective December 7, 2009. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 18:6-1.1 Definitions
- 18:6-1.2 "Retailer" and "Wholesaler" not mutually exclusive

SUBCHAPTER 2. PROHIBITION OF ACTIONS WHICH LESSEN COMPETITION

- 18:6-2.1 Wholesalers
- 18:6-2.2 Retailers
- 18:6-2.3 Prima facie evidence of intent to injure competitors
- 18:6-2.4 through 18:6-2.6 (Reserved)

SUBCHAPTER 3. PRICE LISTS

- 18:6-3.1 Minimum resale prices
- 18:6-3.2 Fractional cents
- 18:6-3.3 Revised minimum resale prices
- 18:6-3.4 Manufacturers' promotions and minimum resale prices
- 18:6-3.5 (Reserved)

SUBCHAPTER 4. MANUFACTURER'S PROMOTIONAL SALES PLANS

- 18:6-4.1 Promotional sales plans
- 18:6-4.2 Notification
- 18:6-4.3 Sales campaigns shall be nondiscriminatory
- 18:6-4.4 Cost of plan
- 18:6-4.5 Written statement on premises

- 18:6-4.6 Noncompliance
- 18:6-4.7 Purchases by manufacturers' representatives
- 18:6-4.8 Collection of sales tax on cigarette sales during promotions
- 18:6-4.9 through 18:6-4.11 (Reserved)

SUBCHAPTER 5. REPORTS REQUIRED

- 18:6-5.1 Distributor reports required
- 18:6-5.2 Wholesale dealer reports required
- 18:6-5.3 Time for filing reports
- 18:6-5.4 Consolidated reports
- 18:6-5.5 Number of reports required
- 18:6-5.6 Reproduction of forms
- 18:6-5.7 Form of reports
- 18:6-5.8 Place for filing reports
- 18:6-5.9 Secrecy of reports
- 18:6-5.10 Reports to be executed
- 18:6-5.11 Reporting of unlicensed retailers
- 18:6-5.12 through 18:6-5.15 (Reserved)

SUBCHAPTER 6. REMEDIES AND PENALTIES

- 18:6-6.1 Penalty; disorderly person
- 18:6-6.2 Remedies by Attorney General
- 18:6-6.3 Remedies by other persons
- 18:6-6.4 Suspension or revocation of license
- 18:6-6.5 Notice of suspension or revocation of license
- 18:6-6.6 Hearing of suspension or revocation of license
- 18:6-6.7 Period of suspension
- 18:6-6.8 Basis of order of suspension or revocation of license
- 18:6-6.9 Service of order of suspension or revocation of license
- 18:6-6.10 Appeal of order of suspension or revocation of license
- 18:6-6.11 Sale during a suspension or revocation of license
- 18:6-6.12 Abatement of proceedings
- 18:6-6.13 Reinstatement of revoked license
- 18:6-6.14 Notice of suspension or revocation to manufacturers
- 18:6-6.15 through 18:6-6.17 (Reserved)

SUBCHAPTER 7. MISCELLANEOUS PROVISIONS

- 18:6-7.1 Combination sales
- 18:6-7.2 Sales by a wholesaler to a wholesaler
- 18:6-7.3 Sales exception
- 18:6-7.4 Effect of sales outside ordinary channels of business
- 18:6-7.5 Evidence considered in determining cost
- 18:6-7.6 Manufacturer's free goods
- 18:6-7.7 Cost survey
- 18:6-7.8 Sales to meet competition; good faith
- 18:6-7.9 Price of a competitor
- 18:6-7.10 Illegal and void contracts
- 18:6-7.11 Cigarette price signs
- 18:6-7.12 Cooperatives
- 18:6-7.13 Drop shipments; prepackaging
- 18:6-7.14 Purchase of retail dealer's license
- 18:6-7.15 Credit memoranda
- 18:6-7.16 Trading stamps
- 18:6-7.17 Act applies to all cigarette licensees
- 18:6-7.18 Change of source of supply
- 18:6-7.19 Gifts or loans
- 18:6-7.20 Powers of Director

SUBCHAPTER 1. GENERAL PROVISIONS

18:6-1.1 Definitions

The following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"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, less all trade discounts and the normal discount for cash, afforded for prompt payment, but excluding any special, extraordinary, or anticipatory discounts for payment within a shorter period of time than the prompt payment date required for eligibility for the normal discount for cash, plus the total face value of any stamps required by the New Jersey Cigarette Tax Act and by any municipal ordinance now in effect or hereafter enacted, if not already included in the invoice or replacement cost. The trade discount and normal discount for cash is deemed to be two percent of the invoice cost or replacement cost of cigarettes.

"Business day" means any day other than a Sunday or a legal holiday.

"Cigarette" means any roll for smoking, made wholly or in part of tobacco, or of any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapper or cover of which is made of paper or any other substance or material excepting tobacco.

"Cigarette Tax Act" means the Public Laws of 1948, Chapter 65 as amended and supplemented (N.J.S.A. 54:40A-1, et seq.).

"Cost of doing business" means and includes without limitation, as evidenced by the standards and methods of accounting regularly employed in the allocation of overhead costs and expenses, paid or incurred:

1. Labor (including salaries of executives and officers);
2. Rent;
3. Depreciation;
4. Selling costs;
5. Maintenance of equipment;
6. Delivery costs;
7. Licenses of all types;
8. Taxes;
9. Insurance;
10. Advertising;

11. In the absence of the filing with the Director of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business" is to be as follows:

- i. For a retailer, eight per cent of the "basic cost of cigarettes" to the retailer;
- ii. For a wholesaler 5.25 per cent of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retailer outlet if performed or paid for by the wholesaler, which cartage cost in the absence of the filing with the Director of satisfactory proof of a lesser or higher cost is

deemed to be $\frac{3}{4}$ of one per cent of the "basic cost of cigarettes" to the wholesaler.

"Cost to the retailer" means the "basic cost of cigarettes" to the retailer plus the "cost of doing business" by the retailer.

"Cost to the wholesaler" means the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business" by the wholesaler.

"Director" means the Director of the Division of Taxation. Wherever in these rules and regulations the word "Director" is used, it shall mean and include any employee or employees of the Division of Taxation, deputized or authorized, either generally or specifically, to act on behalf of the Director.

"Manufacturer" means any person, wherever resident or located, who manufactures or produces, or causes to be manufactured or produced, cigarettes and sells, uses, stores, or distributes the same regardless of whether they are intended for sale, use or distribution within or without the State of New Jersey.

"Manufacturer's representative" means any person, employed by a manufacturer, who, for promotional purposes, sells, stores, handles or distributes cigarettes within the State of New Jersey, limited exclusively to cigarettes manufactured by the employing manufacturer.

"Person" means any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of the State of New Jersey, trust, receiver, trustee, fiduciary and conservator.

"Retailer" means any person who operates a store, stand, booth or concession for the purposes of making sales of cigarettes at retail.

"Sale" means any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

"Sell at Retail", "Sale at Retail" and "Retail Sales" mean 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.

"Sell at Wholesale", "Sale at Wholesale" and "Wholesale Sales" mean 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.

"Wholesaler" means any person who:

1. Purchases cigarettes directly from the manufacturer;
- or
2. Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only;
- or