

CHAPTER 6
UNFAIR CIGARETTE SALES ACT

Authority

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

Source and Effective Date

R.1999 d.79, effective February 4, 1999.
See: 30 N.J.R. 3168(a), 31 N.J.R. 669(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6, Unfair Cigarette Sales Act, expires on August 2, 2004.

Chapter Historical Note

Chapter 6, Unfair Cigarette Sales Act, was filed 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: Source and Effective Date.

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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

3. Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Amended by R.1974 d.243, effective August 20, 1974.

See: 6 N.J.R. 327(b), 6 N.J.R. 414(d).

Amended by R.1979 d.86, effective March 8, 1979.

See: 11 N.J.R. 98(b), 11 N.J.R. 210(a).

Amended by R.1979 d.416, effective October 18, 1979.

See: 11 N.J.R. 472(a), 11 N.J.R. 596(c).

Amended by R.1989 d.199, effective April 17, 1989.

See: 21 N.J.R. 124(a), 21 N.J.R. 1019(a).

Redefined "basic cost of cigarettes" and changed trade and normal discount for cash to "two" percent from "3 $\frac{1}{4}$ " percent.

Statutory References

As to general definitions, see N.J.S.A. 56:7-19; as to the definition of "Cost to the Retailer", see N.J.S.A. 56:7-21; as to the definition of "Cost to the Wholesaler", see N.J.S.A. 56:7-22.

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

Nothing contained in section 1.1 (Definitions) of this chapter shall prevent a person from qualifying in different capacities as both a "retailer" and "wholesaler" under the applicable provisions of the New Jersey Unfair Cigarette Sales Act.

Statutory References

As to the definitions of retailer and wholesaler, see N.J.S.A. 56:7-19, 21, 22.

SUBCHAPTER 2. PROHIBITION OF ACTIONS WHICH LESSEN COMPETITION

18:6-2.1 Wholesalers

(a) Wholesalers with intent to injure competitors or destroy or substantially lessen competition, are prohibited from:

1. Advertising, offering to sell, or selling cigarettes at less than cost; or

2. Offering a rebate in price, giving a rebate in price, offering a concession of any kind, or giving a concession of any kind or nature whatsoever in connection with the sale of cigarettes.

Statutory References

As to unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.2 Retailers

(a) Retailers with intent to injure competitors or destroy or substantially lessen competition, are prohibited from:

1. Advertising, offering to sell, or selling cigarettes at less than cost;

2. Offering a rebate in price, giving a rebate in price, offering a concession of any kind, or giving a concession of any kind or nature whatsoever in connection with the sale of cigarettes;

3. Inducing or attempting to induce or procuring or attempting to procure the purchase of cigarettes at a price less than "cost to wholesaler" as defined in Section 1.1 (Definitions) of this Chapter;

4. Inducing or attempting to induce or procuring or attempting to procure a rebate or concession of any kind or nature whatsoever, in connection with the purchase of cigarettes.

Statutory References

As to unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.3 Prima facie evidence of intent to injure competitors

The advertisement, offering to sell, or sale of cigarettes at less than cost, or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession of any kind or nature whatsoever in connection with the sale of cigarettes or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost by any wholesaler or retailer is prima facie evidence of an intent to injure competitors and to destroy or substantially lessen competition.

Statutory References

As to evidence of intent to do unlawful acts, see N.J.S.A. 56:7-20.

18:6-2.4 through 18:6-2.6 (Reserved)

SUBCHAPTER 3. PRICE LISTS

18:6-3.1 Minimum resale prices

(a) The Director is authorized to prepare and calculate for each and every brand a minimum sales price below which, in the absence of proof of a lesser or higher cost of doing business, cigarettes may not be sold in the State of New Jersey at both wholesale and retail.

(b) Minimum sales prices are calculated by adding to the sum of the basic cost of cigarettes and the total face value of any tax stamps required by the New Jersey Cigarette Tax Act and any municipal ordinance, the presumed cost of

doing business by the wholesalers and retailers respectively, as defined in Section 1.1 (Definitions) of this Chapter.

(c) Minimum resale prices are issued in a list published by the Director and include the prices for sales by a wholesaler both for the delivery and nondelivery of cigarettes, and the prices for sales by a retailer both by the carton and by the pack.

(d) The sale of cigarettes by any wholesaler or retailer below the price specified on such minimum price list is deemed prima facie evidence of a violation of the New Jersey Unfair Cigarette Sales Act.

Public Notice: Notice of Determination.
See: 30 N.J.R. 2308(c).

18:6-3.2 Fractional cents

Whenever the Director prepares and calculates minimum prices at wholesale and retail for any brand or brands of cigarettes, which computation results include a fraction of a cent, the price on all such figures is to be rounded to the next higher cent.

18:6-3.3 Revised minimum resale prices

Whenever there is any change in the basic cost of any brand or brands of cigarettes to a retailer or wholesaler due either to a change in a manufacturer's invoice price or discount, or the rate of a cigarette tax imposed by either the State of New Jersey, or any municipality thereof, the Director shall prepare and recalculate a revised minimum cigarette sales price below which the particular brand or brands may not be sold at wholesale and retail respectively.

18:6-3.4 through 18:6-3.5 (Reserved)

SUBCHAPTER 4. MANUFACTURER'S PROMOTIONAL SALES PLANS

18:6-4.1 Promotional sales plans

Any sales plan, program or promotion, sponsored or initiated by any manufacturer of cigarettes licensed pursuant to the New Jersey Cigarette Tax Act, and which involves the placement of any coupons, literature, premiums, displays, goods, wares, merchandise or other material upon the premises of any licensed retailer which is designed to stimulate, encourage, or induce the purchase of cigarettes by the consumer, or in which a concession or gift is offered with the sale of cigarettes, is subject to the provisions of the New Jersey Unfair Cigarette Sales Act, and these regulations.

18:6-4.2 Notification

Written notification must be given to the Director by every sponsoring manufacturer at least ten days prior to the commencement of any manufacturer's promotional sales plan, including a description of the plan in detail and the dates and period of time during which the plan is to be operative.

18:6-4.3 Sales campaigns are to be non-discriminatory

(a) Every manufacturer's promotional sales plan is to be universal and is to be made available simultaneously and on equal terms to each and every licensed retailer dealing in the sponsoring manufacturers' products.

(b) No such plan may discriminate in the placement of any promotional material, be selective as to time and place, or be limited to a restricted group or class of retailers.

18:6-4.4 Cost of plan

(a) The cost of all coupons, literature, premiums, displays, gifts, wares, merchandise, or other material, offered with the sale of cigarettes in a promotional sales plan are to be borne by the sponsoring manufacturer.

(b) No part of the cost of any such plan is to be paid by any retailer on whose premises the plan is operative.

18:6-4.5 Written statement on premises

Every retailer on whose premises a promotional sales plan is being conducted is required to keep on file a written statement from the sponsoring manufacturer describing the promotion and indicating the dates and period of time during which the plan is to be operative.

18:6-4.6 Noncompliance

Any manufacturer whose promotional sales plan does not completely and fully comply with the provisions of these regulations is deemed to be in violation of the New Jersey Unfair Cigarette Sales Act and unlawful.

18:6-4.7 Purchases by manufacturers' representatives

(a) Whenever a licensed representative of any cigarette manufacturer purchases cigarettes from a licensed Distributor or Wholesale Dealer for sales promotional distribution purposes, the price to be paid by the manufacturer's representative may not be less than the minimum delivered price required to be paid by licensed retail dealers for the particular brand or brands of cigarettes purchased.

(b) The purchase by any manufacturer's representative of any brand or brands of cigarettes below such minimum delivered price is prohibited, and if perpetrated will be deemed a violation of the New Jersey Unfair Cigarette Sales Act.

18:6-4.8 through 18:6-4.11 (Reserved)

informational and sales report on Cigarette Tax Form CDIS-1.

SUBCHAPTER 5. REPORTS REQUIRED

18:6-5.1 Distributor reports required

(a) Each distributor licensed pursuant to the New Jersey Cigarette Tax Act is required to file a monthly confidential