



House of Representatives

General Assembly

File No. 179

January Session, 2011

Substitute House Bill No. 6299

House of Representatives, March 23, 2011

The Committee on General Law reported through REP. TABORSAK of the 109th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHAIN STORE CIGARETTE DISTRIBUTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 12-285 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2011*):

4 (a) When used in this chapter, unless the context otherwise requires:

5 (1) "Person" means any individual, firm, fiduciary, partnership,
6 corporation, limited liability company, trust or association, however
7 formed;

8 (2) "Distributor" means (A) any person in this state engaged in the
9 business of manufacturing cigarettes; (B) any person, other than a
10 buying pool, as defined herein, who purchases cigarettes at wholesale
11 from manufacturers or other distributors for sale to licensed dealers,
12 and who maintains an established place of business, including a
13 location used exclusively for such business, which has facilities in

14 which a substantial stock of cigarettes and related merchandise for
15 resale can be kept at all times, and who sells at least seventy-five per
16 cent of such cigarettes to retailers who, at no time, shall own any
17 interest in the business of the distributor as a partner, stockholder or
18 trustee; (C) any person operating five or more retail stores in this state
19 for the sale of cigarettes, or franchising five or more retail stores in this
20 state for the sale of cigarettes who shares in the gross profits generated
21 by such stores and who purchases cigarettes at wholesale for sale to
22 dealers but sells such cigarettes exclusively to retail stores such person
23 is operating or franchising; (D) any person operating and servicing
24 twenty-five or more cigarette vending machines in this state who buys
25 such cigarettes at wholesale and sells them exclusively in such vending
26 machines. If a person qualified as a distributor in accordance with this
27 subparagraph, in addition sells cigarettes other than in vending
28 machines, such person shall be required to be qualified as a distributor
29 in accordance with subparagraph (B) of this subdivision and have an
30 additional distributor's license for purposes of such other sales; (E) any
31 person who imports into this state unstamped cigarettes, at least
32 seventy-five per cent of which are to be sold to others for resale; and
33 (F) any person operating storage facilities for unstamped cigarettes in
34 this state;

35 (3) "Cigarette vending machine" means a machine used for the
36 purpose of automatically merchandising packaged cigarettes through
37 the insertion of the proper amount of coins therein by the purchaser,
38 but does not mean a restricted cigarette vending machine;

39 (4) "Restricted cigarette vending machine" means a machine used
40 for the dispensing of packaged cigarettes which automatically
41 deactivates after each individual sale, cannot be left operable after a
42 sale and requires, prior to each individual sale, a face-to-face
43 interaction or display of identification between an employee of the
44 area, facility or business where such machine is located and the
45 purchaser;

46 (5) "Dealer" means any person other than a distributor who is

47 engaged in this state in the business of selling cigarettes, including any
48 person operating and servicing fewer than twenty-five cigarette
49 vending machines, and any person who is engaged in the business of
50 selling taxed tobacco products, as defined in section 12-330a, at retail;

51 (6) "Licensed dealer" means a dealer licensed under the provisions
52 of this chapter;

53 (7) "Stamp" means any stamp authorized to be used under this
54 chapter by the Commissioner of Revenue Services and includes heat-
55 applied decals;

56 (8) "Sale" or "sell" includes or applies to gifts, exchanges and barter;
57 and

58 (9) "Buying pool" means and includes any combination, corporation,
59 association, affiliation or group of retail dealers operating jointly in the
60 purchase, sale, exchange or barter of cigarettes, the profits from which
61 accrue directly or indirectly to such retail dealers, provided any person
62 holding a distributor's license issued prior to June 29, 1951, shall be
63 deemed to be a distributor within the terms of this section.

64 Sec. 2. Subsection (a) of section 12-286 of the general statutes is
65 repealed and the following is substituted in lieu thereof (*Effective July*
66 *1, 2011*):

67 (a) (1) The commissioner shall, after May 25, 1994, require for an
68 initial application for a distributor's license, in addition to such other
69 information deemed to be necessary, the filing of three affidavits from
70 three recognized manufacturers of cigarettes stating such
71 manufacturers' intent to supply the distributor if the applicant is
72 granted a license. A chain store shall be exempt from filing such
73 affidavits. Any pending application on May 25, 1994, and any person
74 purchasing the business of a licensed distributor shall be exempt from
75 filing such affidavits. For purposes of this subsection, "chain store"
76 means the operator or franchisor of five or more retail establishments,
77 [with common ownership and control.]

78 (2) The commissioner may make public a list of recognized
79 manufacturers of cigarettes.

80 Sec. 3. Section 12-288 of the general statutes is repealed and the
81 following is substituted in lieu thereof (*Effective July 1, 2011*):

82 Each person engaging in, or intending to engage in, the business of
83 selling cigarettes in this state as a distributor shall secure a license from
84 the Commissioner of Revenue Services before engaging or continuing
85 to engage in such business. Subject to the provisions of section 12-286,
86 as amended by this act, such license shall be renewable annually. The
87 annual fee for a distributor's license shall be one thousand two
88 hundred fifty dollars, provided in the case of a distributor who sells
89 cigarettes as a distributor exclusively to retail stores which such
90 distributor is operating, the fee for such distributor's license shall be:
91 (1) Three hundred fifteen dollars annually if such distributor operates
92 or franchises less than fifteen such retail stores; (2) six hundred twenty-
93 five dollars annually if such distributor operates or franchises fifteen or
94 more but less than twenty-five such retail stores; and (3) one thousand
95 two hundred fifty dollars annually if such distributor operates or
96 franchises twenty-five or more such retail stores. Such license shall be
97 valid for a period beginning with the date of license to the thirtieth day
98 of September next succeeding the date of license unless sooner revoked
99 by the commissioner as provided in section 12-295 or unless the person
100 to whom such license was issued discontinues business, in either of
101 which cases the holder of the license shall immediately return it to the
102 Commissioner of Revenue Services.

103 Sec. 4. Subsection (a) of section 12-326a of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective July*
105 *1, 2011*):

106 (a) As used in sections 12-326a to 12-326h, inclusive, as amended by
107 this act, (1) "stamping agent" means a licensed distributor other than a
108 buying pool, who purchases cigarettes at wholesale from
109 manufacturers or other distributors for sale to licensed dealers and
110 who maintains an established place of business, including a location

111 used exclusively for such business, which has facilities in which a
112 substantial stock of cigarettes and related merchandise for resale can
113 be kept at all times, and who sells at least seventy-five per cent of such
114 cigarettes to retailers who, at no time, shall own any interest in the
115 business of the distributor as a partner, stockholder or trustee; (2)
116 "subjobber" means a licensed distributor who purchases stamped
117 cigarettes at wholesale for sale to licensed dealers who, at no time,
118 shall own any interest in the business of the distributor as a partner,
119 stockholder or trustee; (3) "chain store" means a licensed distributor
120 (A) operating five or more retail stores with common ownership and
121 control in this state for the sale of cigarettes, or franchising five or more
122 retail stores in this state for the sale of cigarettes who shares in the
123 gross profits generated by such stores and who purchases cigarettes at
124 wholesale either from another distributor or direct from the
125 manufacturer for sale to dealers but sells such cigarettes exclusively in
126 or to retail stores such person is operating or franchising, or (B)
127 operating and servicing twenty-five or more cigarette vending
128 machines in this state who buys such cigarettes at wholesale and sells
129 them exclusively in such vending machines; (4) "cost" means the basic
130 cost of cigarettes plus the cost of doing business; (5) "basic cost of
131 cigarettes" means (A) the lower of (i) the invoice cost of the cigarettes
132 to the distributor or dealer, as the case may be, or (ii) the replacement
133 cost in the quantity last purchased, plus (B) the full face value of any
134 stamps which may be required by this chapter, if not already included
135 in the invoice cost, minus (C) all trade discounts, if any, other than
136 cash discounts; (6) "cost of doing business" means the costs, as
137 computed for federal income tax purposes, that are related to the sale
138 of cigarettes, including but not limited to labor costs, including salaries
139 of executives and officers, rent, depreciation, selling costs, maintenance
140 of equipment, delivery costs, interest, licenses, taxes, insurance,
141 advertising, preopening expenses and any central and regional
142 administrative expenses, expressed as a percentage of the basic cost of
143 cigarettes and applied thereto. In applying such percentage to the basic
144 cost of cigarettes, any fractional part of a cent equal to one-tenth or
145 more of one cent per carton of ten packages of cigarettes shall be

146 rounded to the next higher cent.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	12-285(a)
Sec. 2	<i>July 1, 2011</i>	12-286(a)
Sec. 3	<i>July 1, 2011</i>	12-288
Sec. 4	<i>July 1, 2011</i>	12-326a(a)

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which allows certain franchises to be licensed as cigarette distributors, would not result in any fiscal impact to the state or municipalities as it is not anticipated to impact the price or quantity of cigarettes sold in Connecticut.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 6299

AN ACT CONCERNING CHAIN STORE CIGARETTE DISTRIBUTORS.

SUMMARY:

This bill allows certain franchises to be licensed as cigarette distributors and to qualify as chain stores for purposes of the cigarette tax and minimum mark-up laws.

Under current law, a person who operates five or more retail stores and buys cigarettes at wholesale exclusively for sale to those stores is licensed as a distributor for cigarette tax purposes. This bill allows a franchisor to be licensed as a distributor if it franchises at least five retail stores, buys cigarettes at wholesale exclusively for to those stores, and splits the gross profits generated. Under current law, each of a franchisor's stores selling cigarettes must have a cigarette dealer's license.

For purposes of the cigarette minimum markup requirements, the bill also extends the definition of a "chain store" to franchisors of five or more retail stores. Under current law, only those who operate of five or more retail stores with common control or ownership qualify as chain stores. Distributors who sell to chain stores have lower minimum mark-up requirements on those sales than on sales to dealers (see BACKGROUND).

By defining qualifying franchises as chain stores, the bill exempts them from requirements that, to receive a distributor's license, (1) they provide the revenue services commissioner with three affidavits from recognized cigarette manufacturers that the manufacturers intend to

supply the distributor with cigarettes and (2) their retail outlets be under common control or ownership.

Finally, the bill extends existing annual distributors' license fees to qualifying franchisors. These fees are \$315 for those with fewer than 15 stores, \$625 for those with 15 to 24 stores, and \$1,250 for those with 25 or more stores.

EFFECTIVE DATE: July 1, 2011

BACKGROUND

Chain Stores Selling Cigarettes

The law requires different types of cigarette sellers to mark-up their cigarettes by different percentages representing their cost of doing business. It prohibits selling cigarettes below cost and defines "cost," absent proof otherwise, in a way that depends on the type of seller and transaction. Sellers must sell at their basic cost plus a percentage representing their cost of doing business.

<i>Distributor</i>	<i>Cost of Doing Business</i>
Stamping agent selling to subjobbers and chain stores	.875%
Stamping agent selling to dealers	5.75%
Subjobber selling to dealers	4.875%

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/10/2011)