

# HOUSE BILL 1200

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By: **Delegates Love, Feldman, Jameson, and W. Miller**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Cigarette Sales Below Cost – Wholesale Markup**

3 FOR the purpose of altering the presumptive cost of doing business used to determine  
4 the basic cost of cigarettes to a cigarette wholesaler for purposes of provisions of  
5 law governing the sale of cigarettes below cost; authorizing a wholesaler to  
6 implement a wholesale markup that is less than a certain amount under certain  
7 circumstances; altering a certain definition; making certain stylistic changes;  
8 and generally relating to sales of cigarettes below cost.

9 BY repealing and reenacting, without amendments,  
10 Article – Commercial Law  
11 Section 11–501(a) and (l)  
12 Annotated Code of Maryland  
13 (2005 Replacement Volume and 2011 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Commercial Law  
16 Section 11–501(e)(1) and (m) and 11–503(a)  
17 Annotated Code of Maryland  
18 (2005 Replacement Volume and 2011 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Commercial Law**

22 11–501.

23 (a) In this subtitle the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (e) (1) “Cost to the wholesaler”, subject to the special cost provisions of §  
2 11–503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a  
3 markup to cover [his] **THE WHOLESALER’S** cost of doing business, which cost of doing  
4 business:

5 (i) Includes the cartage cost to a retailer; and

6 (ii) In the absence of satisfactory proof of a lesser cost, is  
7 presumed to be [5] **0.25** percent of the basic cost of cigarettes to [him] **THE**  
8 **WHOLESALER**.

9 (l) (1) “Wholesale sale of cigarettes” includes any sale whereby cigarettes  
10 are sold for a valuable consideration, made in the ordinary course of trade or in the  
11 usual conduct of the seller’s business to a retailer, other than to a vending machine  
12 operator or to a sub–wholesaler described in subsection (m)(2) of this section, for the  
13 bona fide purpose of resale.

14 (2) “Wholesale sale of cigarettes” includes any transfer of cigarettes on  
15 consignment or otherwise, whereby title is retained by the seller as security for the  
16 payment of the purchase price.

17 (m) (1) “Wholesaler” means a person who purchases cigarettes directly  
18 from a manufacturer.

19 (2) “Wholesaler” includes a person, who, as a sub–wholesaler:

20 (i) Purchases cigarettes from another wholesaler solely for the  
21 purpose of bona fide resale to retailers other than those directly or indirectly owned,  
22 affiliated, or controlled by [him] **THE PERSON**; and

23 (ii) Services the retailers by maintaining an established place of  
24 business for the sale of cigarettes, including warehouse facilities, adequate inventory,  
25 proper accounting records, and necessary equipment and vehicles for the storage and  
26 distribution of cigarettes.

27 (3) If the person is engaged in the business of making both wholesale  
28 sales of cigarettes and retail sales of cigarettes, the word only applies to the wholesale  
29 sales of cigarettes portion of the business.

30 11–503.

31 (a) (1) [In] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION**, IN a  
32 wholesale sale of cigarettes, the presumptive wholesale markup of [5] **0.25** percent  
33 provided for in § 11–501(e) of this subtitle may be reduced by 2 cents for each carton of  
34 200 cigarettes, if:

1           **[(1)] (I)** The cigarettes are not delivered unless their full price is  
2 received by the wholesaler at or before delivery; and

3           **[(2)] (II)** The purchaser performs or pays for the cartage cost of the  
4 cigarettes to the place of business of the purchaser.

5           **(2) A WHOLESALER MAY IMPLEMENT A WHOLESALE MARKUP**  
6 **THAT IS LESS THAN 0.25 PERCENT IF:**

7                   **(I) THE WHOLESALER FILES SATISFACTORY PROOF WITH**  
8 **THE COMPTROLLER THAT THE WHOLESALER'S COST OF DOING BUSINESS IS**  
9 **LESS THAN THE PRESUMPTIVE 0.25 PERCENT WHOLESALE MARKUP; AND**

10                   **(II) THE COMPTROLLER APPROVES THE LESSER**  
11 **WHOLESALE MARKUP.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2012.