

House Bill 485

By: Representatives Randall of the 107<sup>th</sup>, Birdsong of the 104<sup>th</sup>, Jenkins of the 93<sup>rd</sup>, Graves of the 106<sup>th</sup> and Ray of the 108<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal  
2 and void contracts, so as to regulate certain agreements between cigarette dealers and  
3 manufacturers; to prohibit certain agreements; to provide definitions; to provide that certain  
4 contracts are void; to provide for damages, injunctive or other equitable relief, class actions,  
5 and punitive damages; to provide for related matters; to repeal conflicting laws; and for other  
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 13 of the Official Code of Georgia Annotated, relating to illegal and void  
10 contracts, is amended by inserting a new article to be designated Article 4 to read as follows:

11 "ARTICLE 4

12 13-8-50.

13 The definitions set forth in Code Section 48-11-1 shall apply to this article.

14 13-8-51.

15 (a) A cigarette dealer may enter into and participate in a cigarette manufacturer's  
16 merchandising, advertising, display, or consumer promotion or discount programs in which  
17 the dealer:

18 (1) Provides cigarette merchandising, advertising, stocking, display, or shelf space to the  
19 manufacturer;

20 (2) Conducts the manufacturer's consumer promotion and discount programs and  
21 provides such promotions and discounts to consumers; and

22 (3) Receives compensation from the manufacturer for performing the activities described  
23 in paragraphs (1) and (2) of this subsection.

24 (b) A cigarette manufacturer may:

- 1 (1) Offer and enter into a dealer agreement or program as described in subsection (a) of  
 2 this Code section;
- 3 (2) Pay or provide other compensation to dealers for participating in any such agreement  
 4 or program; and
- 5 (3) Provide consumer promotions and discounts to dealers for the dealers to furnish to  
 6 consumers.

7 13-8-52.

8 No cigarette manufacturer may, directly or indirectly:

- 9 (1) Condition a dealer's receipt of consumer promotions or consumer price discounts on  
 10 the dealer's conduct or actions relating to the manufacturer's products or the products of  
 11 any other manufacturer, except for requirements that the dealer:
- 12 (A) Provide the promotion or discount to consumers; and
- 13 (B) Advertise and display the promotion and the promoted or discounted product to  
 14 consumers;
- 15 (2) Require or cause the dealer to allocate a specified percentage or fraction of the dealer's  
 16 merchandising, stocking, display, shelf, or advertising space to the manufacturer;
- 17 (3) Prevent, restrict, or limit a dealer from advertising, stocking, displaying, or participating  
 18 in a program for another manufacturer's product;
- 19 (4) Prevent, restrict, or limit the dealer from determining the size or location of the space  
 20 that the dealer uses to advertise, stock, display, or promote cigarettes; or
- 21 (5) Require the dealer to raise its prices on, or prevent the dealer from setting, retaining,  
 22 or reducing its prices on, another manufacturer's products.

23 13-8-53.

24 Any agreement or contract in violation of this article shall be void.

25 13-8-54.

- 26 (a) Any person injured in his or her business or property by reason of anything forbidden  
 27 by or in noncompliance with the requirements of this article may bring an action in the  
 28 appropriate superior court of this state for injunctive relief or other equitable relief and  
 29 shall recover the actual damages sustained and the costs of such action, including  
 30 reasonable attorney's fees.
- 31 (b) When such action is one of common or general interest to many persons or when the  
 32 parties are numerous and it is impracticable to bring them all before the court, one or more  
 33 persons may bring a class action for the benefit of the whole, including actions for  
 34 injunctive relief.

1 (c) In an action for money damages, if the jury finds that the defendant acted maliciously,  
2 the jury may award punitive damages as permitted by Georgia law."

3 **SECTION 2.**

4 All laws and parts of laws in conflict with this Act are repealed.