

By: Senator(s) Tollison

To: Finance

SENATE BILL NO. 2812
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF WHOLESALER IN THE TOBACCO TAX LAWS; TO
3 AMEND SECTION 27-69-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A
4 RESIDENCY REQUIREMENT FOR A WHOLESALE TOBACCO SALES PERMIT; AND
5 FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. Section 27-69-3, Mississippi Code of 1972, is
8 amended as follows:

9 **[Until July 1, 2001, this section shall read as follows:]**

10 27-69-3. When used in this chapter:

11 (a) The word "state" shall mean the State of
12 Mississippi as geographically defined, and any and all waters
13 under the jurisdiction of the State of Mississippi.

14 (b) The words "State Auditor" shall mean the Auditor of
15 Public Accounts of the State of Mississippi, or his legally
16 appointed deputy, clerk or agent.

17 (c) The word "commissioner" shall mean the Chairman of
18 the State Tax Commission of the State of Mississippi, and his
19 authorized agents and employees.

20 (d) The word "person" shall mean any individual,
21 company, corporation, partnership, association, joint venture,
22 estate, trust, or any other group, or combination acting as a
23 unit, and the plural as well as the singular, unless the intention
24 to give a more limited meaning is disclosed by the context.

25 (e) The word "consumer" shall mean a person who comes
26 into possession of tobacco for the purpose of consuming it, giving
27 it away, or disposing of it in any way by sale, barter or
28 exchange.

29 (f) The word "tobacco" shall mean any cigarettes,
30 cigars, cheroots, stogies, smoking tobacco (including granulated,
31 plug cut, crimp cut, ready rubbed, and other kinds and forms of
32 tobacco, or substitutes therefor, prepared in such manner as to be
33 suitable for smoking in a pipe or cigarette) and including plug
34 and twist chewing tobacco and snuff, when such "tobacco" is
35 manufactured and prepared for sale or personal consumption. All
36 words used herein shall be given the meaning as defined in the
37 regulations of the Treasury Department of the United States of
38 America.

39 (g) The words "first sale" shall mean and include the
40 first sale, or distribution of such tobacco in intrastate
41 commerce, or the first use or consumption of such tobacco within
42 this state.

43 (h) The words "drop shipment" shall mean and include
44 any delivery of tobacco received by any person within this state,
45 when payment for such tobacco is made to the shipper, or seller by
46 or through a person other than a consignee.

47 (i) The word "distributor" shall include every person,
48 except retailers as defined herein, in the state who manufactures
49 or produces tobacco or who ships, transports, or imports into this
50 state, or in any manner acquires or possesses tobacco, and makes a
51 first sale of the same in the state.

52 (j) The word "wholesaler" shall include dealers, whose
53 principal business is that of a wholesale dealer or jobber, who is
54 known to the retail trade as such, and whose place of business is
55 located in Mississippi or in a state which affords reciprocity to
56 wholesalers domiciled in Mississippi, who shall sell any taxable
57 tobacco to retail dealers only for the purpose of resale, and who
58 have tobacco sales to retail stores other than their own or their
59 subsidiaries in Mississippi that exceed fifty percent (50%) of
60 their total tobacco sales.

61 (k) The word "retailer" shall include every person,
62 other than a wholesale dealer, as defined above, whose principal
63 business is that of selling merchandise at retail, who shall sell,
64 or offer for sale tobacco to the consumer. The sale of tobacco in
65 quantity lots by retailers to other retailers, transient vendors,
66 or other persons, shall not be construed as wholesale and shall
67 not qualify such retailer for a permit as a wholesaler.

68 (l) The word "dealer" shall include every person, firm,
69 corporation or association of persons, except retailers as defined
70 herein, who manufacture tobacco for distribution, for sale, for
71 use or for consumption in the State of Mississippi.

72 The word "dealer" is further defined to mean any person,
73 firm, corporation or association of persons, except retailers as
74 defined herein, who imports tobacco from any state or foreign
75 country for distribution, sale, use, or consumption in the State
76 of Mississippi.

77 (m) The words "distributing agent" shall include every
78 person in the state who acts as an agent of any person outside the
79 State of Mississippi, by receiving tobacco in interstate commerce,
80 and storing such tobacco in this state subject to distribution, or
81 delivery upon order from said person outside the state to
82 distributors, wholesalers, retailers and dealers.

83 (n) The words "transient vendor" shall mean and include
84 every person commonly and generally termed "peddlers" and every
85 person acting for himself, or as an agent, employee, salesman, or
86 in any capacity for another, whether as owner, bailee, or other
87 custodian of tobacco, and going from person to person, dealer to
88 dealer, house to house, or place to place, and selling or offering
89 for sale at retail or wholesale tobacco, and every person who does
90 not keep a regular place of business open at all times in regular
91 hours, and every person who goes from person to person, dealer to
92 dealer, house to house, or place to place, and sells or offers for
93 sale tobacco which he carries with him, and who delivers the same

94 at the time of, or immediately after the sale, or without
95 returning to the place of business operations (a permanent place
96 of business within the state) between the taking of the order and
97 the delivery of the tobacco, or

98 All persons who go from person to person, house to house,
99 place to place, or dealer to dealer, soliciting orders by
100 exhibiting samples, or taking orders, and thereafter making
101 delivery of tobacco, or filling the order without carrying or
102 sending the order to the permanent place of business, and
103 thereafter making delivery of the tobacco pursuant to the terms of
104 the order, or

105 All persons who go from person to person, place to place,
106 house to house, or dealer to dealer, carrying samples and selling
107 tobacco from samples, and afterwards making delivery without
108 taking and sending an order therefor to a permanent place of
109 business for the filling of the order, and delivery of the
110 tobacco, or the exchange of tobacco having become damaged or
111 unsalable, or the purchase by tobacco of advertising space, or

112 All persons who have in their possession, or under their
113 control, any tobacco offered, or to be offered for sale or to be
114 delivered, unless the sale or delivery thereof is to be made in
115 pursuance of a bona fide order for the tobacco, to be sold or
116 delivered, said order to be evidenced by an invoice or memorandum.

117 (o) The words "contraband tobacco" shall mean all
118 tobacco found in the possession of any person whose permit to
119 engage in dealing in tobacco has been revoked by the commissioner;
120 and any cigarettes found in the possession of any person to which
121 the proper tax stamps have not been affixed; and any cigarettes
122 improperly stamped when found in the possession of any person; and
123 all other tobacco upon which the excise tax has not been paid.

124 (p) The word "sale" means an exchange for money or
125 goods, giving away, or distributing any tobacco as defined in this
126 chapter.

127 (q) The words "forty-eight (48) hours" and "seventy-two
128 (72) hours" shall mean two (2) calendar days and three (3)
129 calendar days, respectively, excluding Sundays and legal holidays.

130 (r) The word "stamp" or "stamping," or the import of
131 such word, when used in this chapter, shall mean any manner of
132 stamp or impression permitted by the commissioner that carries out
133 the purposes of the chapter in clearly indicating upon the
134 packages of cigarettes taxed the due payment of the tax.

135 (s) "Manufacturer's list price" shall mean the full
136 sales price at which tobacco is sold or offered for sale by a
137 manufacturer to the wholesaler or distributor in this state
138 without any deduction for freight, trade discount, cash discounts,
139 special discounts or deals, cash rebates, or any other reduction
140 from the regular selling price. In the event freight charges on
141 shipments to wholesalers or distributors are not paid by the
142 manufacturer, then such freight charges required to be paid by the
143 wholesalers and distributors shall be added to the amount paid to
144 the manufacturer in order to determine "manufacturer's list
145 price." In the case of a wholesaler or distributor whose place of
146 business is located outside this state, the "manufacturer's list
147 price" for tobacco sold in this state by such wholesaler or
148 distributor shall in all cases be considered to be the same as
149 that of a wholesaler or distributor located within this state.

150 **[From and after July 1, 2001, this section shall read as**
151 **follows:]**

152 27-69-3. When used in this chapter:

153 (a) "State" means the State of Mississippi as
154 geographically defined, and any and all waters under the
155 jurisdiction of the State of Mississippi.

156 (b) "State Auditor" means the Auditor of Public
157 Accounts of the State of Mississippi, or his legally appointed
158 deputy, clerk or agent.

159 (c) "Commissioner" means the Chairman of the State Tax
160 Commission of the State of Mississippi, and his authorized agents
161 and employees.

162 (d) "Person" means any individual, company,
163 corporation, partnership, association, joint venture, estate,
164 trust, or any other group, or combination acting as a unit, and
165 the plural as well as the singular, unless the intention to give a
166 more limited meaning is disclosed by the context.

167 (e) "Consumer" means a person who comes into possession
168 of tobacco for the purpose of consuming it, giving it away, or
169 disposing of it in any way by sale, barter or exchange.

170 (f) "Tobacco" means any cigarettes, cigars, cheroots,
171 stogies, smoking tobacco (including granulated, plug cut, crimp
172 cut, ready rubbed, and other kinds and forms of tobacco, or
173 substitutes therefor, prepared in such manner as to be suitable
174 for smoking in a pipe or cigarette) and including plug and twist
175 chewing tobacco and snuff, when such "tobacco" is manufactured and
176 prepared for sale or personal consumption. All words used herein
177 shall be given the meaning as defined in the regulations of the
178 Treasury Department of the United States of America.

179 (g) "First sale" means and includes the first sale, or
180 distribution of such tobacco in intrastate commerce, or the first
181 use or consumption of such tobacco within this state.

182 (h) "Drop shipment" means and includes any delivery of
183 tobacco received by any person within this state, when payment for
184 such tobacco is made to the shipper, or seller by or through a
185 person other than a consignee.

186 (i) "Distributor" includes every person, except
187 retailers as defined herein, in the state who manufactures or
188 produces tobacco or who ships, transports, or imports into this
189 state, or in any manner acquires or possesses tobacco, and makes a
190 first sale of the same in the state.

191 (j) "Wholesaler" includes dealers, whose principal
192 business is that of a wholesale dealer or jobber, who is known to
193 the retail trade as such, and whose place of business is located
194 in Mississippi or in a state which affords reciprocity to
195 wholesalers domiciled in Mississippi, who shall sell any taxable
196 tobacco to retail dealers only for the purpose of resale, and who
197 have tobacco sales to retail stores other than their own or their
198 subsidiaries in Mississippi that exceed fifty percent (.0%) of
199 their total tobacco sales.

200 (k) "Retailer" includes every person, other than a
201 wholesale dealer, as defined above, whose principal business is
202 that of selling merchandise at retail, who shall sell, or offer
203 for sale tobacco to the consumer. The sale of tobacco in quantity
204 lots by retailers to other retailers, transient vendors, or other
205 persons, shall not be construed as wholesale and shall not qualify
206 such retailer for a permit as a wholesaler.

207 (l) "Dealer" includes every person, firm, corporation
208 or association of persons, except retailers as defined herein, who
209 manufacture tobacco for distribution, for sale, for use or for
210 consumption in the State of Mississippi.

211 The word "dealer" is further defined to mean any person,
212 firm, corporation or association of persons, except retailers as
213 defined herein, who imports tobacco from any state or foreign
214 country for distribution, sale, use, or consumption in the State
215 of Mississippi.

216 (m) "Distributing agent" includes every person in the
217 state who acts as an agent of any person outside the State of
218 Mississippi, by receiving tobacco in interstate commerce, and
219 storing such tobacco in this state subject to distribution, or
220 delivery upon order from said person outside the state to
221 distributors, wholesalers, retailers and dealers.

222 (n) "Transient vendor" means and includes every person
223 commonly and generally termed "peddlers" and every person acting

224 for himself, or as an agent, employee, salesman, or in any
225 capacity for another, whether as owner, bailee, or other custodian
226 of tobacco, and going from person to person, dealer to dealer,
227 house to house, or place to place, and selling or offering for
228 sale at retail or wholesale tobacco, and every person who does not
229 keep a regular place of business open at all times in regular
230 hours, and every person who goes from person to person, dealer to
231 dealer, house to house, or place to place, and sells or offers for
232 sale tobacco which he carries with him, and who delivers the same
233 at the time of, or immediately after the sale, or without
234 returning to the place of business operations (a permanent place
235 of business within the state) between the taking of the order and
236 the delivery of the tobacco, or

237 All persons who go from person to person, house to house,
238 place to place, or dealer to dealer, soliciting orders by
239 exhibiting samples, or taking orders, and thereafter making
240 delivery of tobacco, or filling the order without carrying or
241 sending the order to the permanent place of business, and
242 thereafter making delivery of the tobacco pursuant to the terms of
243 the order, or

244 All persons who go from person to person, place to place,
245 house to house, or dealer to dealer, carrying samples and selling
246 tobacco from samples, and afterwards making delivery without
247 taking and sending an order therefor to a permanent place of
248 business for the filling of the order, and delivery of the
249 tobacco, or the exchange of tobacco having become damaged or
250 unsalable, or the purchase by tobacco of advertising space, or

251 All persons who have in their possession, or under their
252 control, any tobacco offered, or to be offered for sale or to be
253 delivered, unless the sale or delivery thereof is to be made in
254 pursuance of a bona fide order for the tobacco, to be sold or
255 delivered, said order to be evidenced by an invoice or memorandum.

256 (o) "Contraband tobacco" means all tobacco found in the
257 possession of any person whose permit to engage in dealing in
258 tobacco has been revoked by the commissioner; and any cigarettes
259 found in the possession of any person to which the proper tax
260 stamps have not been affixed; and any cigarettes improperly
261 stamped when found in the possession of any person; and all other
262 tobacco upon which the excise tax has not been paid.

263 (p) "Sale" means an exchange for money or goods, giving
264 away, or distributing any tobacco as defined in this chapter.

265 (q) "Forty-eight (48) hours" and "seventy-two (72)
266 hours" means two (2) calendar days and three (3) calendar days,
267 respectively, excluding Sundays and legal holidays.

268 (r) "Stamp" or "stamping," or the import of such word,
269 when used in this chapter, means any manner of stamp or impression
270 permitted by the commissioner that carries out the purposes of the
271 chapter in clearly indicating upon the packages of cigarettes
272 taxed the due payment of the tax and clearly identifying, by
273 serial number or otherwise, the permittee who affixed the stamp to
274 the particular package.

275 (s) "Manufacturer's list price" means the full sales
276 price at which tobacco is sold or offered for sale by a
277 manufacturer to the wholesaler or distributor in this state
278 without any deduction for freight, trade discount, cash discounts,
279 special discounts or deals, cash rebates, or any other reduction
280 from the regular selling price. In the event freight charges on
281 shipments to wholesalers or distributors are not paid by the
282 manufacturer, then such freight charges required to be paid by the
283 wholesalers and distributors shall be added to the amount paid to
284 the manufacturer in order to determine "manufacturer's list
285 price." In the case of a wholesaler or distributor whose place of
286 business is located outside this state, the "manufacturer's list
287 price" for tobacco sold in this state by such wholesaler or

288 distributor shall in all cases be considered to be the same as
289 that of a wholesaler or distributor located within this state.

290 SECTION 2. Section 27-69-5, Mississippi Code of 1972, is
291 amended as follows:

292 27-69-5. Every distributor, wholesaler, dealer or retailer
293 who desires to become engaged in the sale or use of tobacco upon
294 which a tax is required to be paid shall file with the
295 commissioner an application for a permit to engage in such
296 business. The application for a permit shall be filed on blanks
297 to be furnished by the commissioner for that purpose. The
298 application must be subscribed and sworn to by the person owning
299 the business, or having an ownership interest therein. If the
300 applicant is a corporation, a duly authorized agent shall execute
301 the application. The application shall show the name of such
302 person, and in case of partnership, the name of each partner
303 thereof, the person's post office address, the location of the
304 place of business to which the permit shall apply, and the nature
305 of the business in which engaged, and any other information the
306 commissioner may require. No distributor, wholesaler, dealer or
307 retailer shall sell any tobacco until such application has been
308 filed, the prescribed permit fee paid, and the permit obtained.
309 Except as otherwise provided in this paragraph, said permit shall
310 expire on January 31 of each year. However, a retail permit shall
311 continue in force during the time that the permit holder to whom
312 it is issued continues in the same business at the same location
313 unless such permit is revoked by the commissioner for cause or is
314 revoked pursuant to any provision of the Mississippi Juvenile
315 Tobacco Access Prevention Act in Sections 97-32-1 through
316 97-32-23.

317 An application shall be filed, and a permit obtained for each
318 place of business owned or operated by each distributor,
319 wholesaler, dealer or retailer.

320 Upon receipt of the application and any permit fee
321 hereinafter provided for, the commissioner may issue to every
322 distributor, wholesaler, dealer or retailer, for the place of
323 business designated, a nonassignable permit, authorizing the sale
324 or use of tobacco in the state. Said permit shall provide that
325 the same is revocable, and may be forfeited or suspended upon
326 violation of any provision of this chapter, the Mississippi
327 Tobacco Youth Access Prevention Act of 1997 or any rule or
328 regulation adopted by the commissioner. If such permit is revoked
329 or suspended, said distributor, wholesaler, dealer or retailer
330 shall not sell any tobacco from such place of business until a new
331 permit is granted, or the suspension of the old permit removed.

332 A permit cannot be transferred from one person to another,
333 and the permit shall at all times be publicly displayed by the
334 distributor, wholesaler, dealer or retailer in his place of
335 business so as to be seen easily by the public. A permit may be
336 refused to any person previously convicted of violations of this
337 chapter.

338 No wholesale permit shall be granted to an applicant that has
339 not been a resident of the State of Mississippi for at least two
340 (2) years.

341 SECTION 3. This act shall take effect and be in force from
342 and after its passage.