

By: Representatives Morris, Holland,  
Whittington, Brown, Compretta, Eaton, Flaggs,  
Mayo, McCoy, Miles, Moak, Peranich, Stringer,  
Watson

To: Medicaid; Ways and Means

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 410

1 AN ACT TO AMEND SECTION 43-13-115, MISSISSIPPI CODE OF 1972,  
2 TO REINSTATE MEDICAID ELIGIBILITY FOR THE POVERTY LEVEL AGED AND  
3 DISABLED (PLAD) GROUP; TO AMEND SECTIONS 27-69-3, 27-69-5,  
4 27-69-7, 27-69-11, 27-69-13 AND 27-69-41, MISSISSIPPI CODE OF  
5 1972, TO INCREASE THE EXCISE TAX ON CIGARETTES AND OTHER TOBACCO  
6 PRODUCTS; TO DEFINE THE TERMS "TOBACCO SETTLEMENT",  
7 "NONPARTICIPATING MANUFACTURER" AND "PARTICIPATING MANUFACTURER"  
8 FOR PURPOSES OF THE STATE TOBACCO TAX LAW; TO REQUIRE THAT  
9 CIGARETTE MANUFACTURERS PAY AN EQUITY ASSESSMENT OF TWO CENTS PER  
10 CIGARETTE ON ALL CIGARETTES SUBJECT TO THE CIGARETTE EXCISE TAX;  
11 TO PROVIDE THAT SUCH EQUITY ASSESSMENT SHALL BE INCREASED ANNUALLY  
12 BY THREE PERCENT OR THE INCREASE IN THE CONSUMER PRICE INDEX  
13 WHICHEVER IS GREATER; TO PROVIDE THAT CIGARETTE WHOLESALERS MUST  
14 PROVIDE CIGARETTE MANUFACTURERS MONTHLY REPORTS SETTING FORTH THE  
15 NUMBER OF CIGARETTES ON WHICH TOBACCO TAX STAMPS WERE AFFIXED  
16 DURING THE PRECEDING MONTH AND IDENTIFYING SUCH CIGARETTES BY  
17 MANUFACTURER, BRAND AND STYLE; TO PROVIDE A CREDIT AGAINST THE  
18 EQUITY ASSESSMENT FOR ANNUAL TOBACCO SETTLEMENT INSTALLMENTS MADE  
19 BY PARTICIPATING MANUFACTURERS; TO PROVIDE PENALTIES FOR THE  
20 FAILURE OF A CIGARETTE MANUFACTURER TO PAY THE EQUITY ASSESSMENT;  
21 TO PROVIDE PENALTIES FOR THE FAILURE OF A WHOLESALER TO PROVIDE  
22 INFORMATION TO A MANUFACTURER NECESSARY FOR THE MANUFACTURER TO  
23 COMPUTE THE EQUITY ASSESSMENT; TO AMEND SECTION 27-69-75,  
24 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE REVENUE DERIVED FROM  
25 THE TAX INCREASES AND THE EQUITY ASSESSMENT PROVIDED FOR BY THIS  
26 ACT SHALL BE DEPOSITED INTO THE SPECIAL FUND IN THE STATE TREASURY  
27 TO THE CREDIT OF THE GOVERNOR'S OFFICE-DIVISION OF MEDICAID; AND  
28 FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 43-13-115, Mississippi Code of 1972, is  
31 amended as follows:

32 43-13-115. Recipients of Medicaid shall be the following  
33 persons only:

34 (1) Those who are qualified for public assistance  
35 grants under provisions of Title IV-A and E of the federal Social  
36 Security Act, as amended, including those statutorily deemed to be  
37 IV-A and low income families and children under Section 1931 of  
38 the federal Social Security Act. For the purposes of this  
39 paragraph (1) and paragraphs (8), (17) and (18) of this section,  
40 any reference to Title IV-A or to Part A of Title IV of the

41 federal Social Security Act, as amended, or the state plan under  
42 Title IV-A or Part A of Title IV, shall be considered as a  
43 reference to Title IV-A of the federal Social Security Act, as  
44 amended, and the state plan under Title IV-A, including the income  
45 and resource standards and methodologies under Title IV-A and the  
46 state plan, as they existed on July 16, 1996. The Department of  
47 Human Services shall determine Medicaid eligibility for children  
48 receiving public assistance grants under Title IV-E. The division  
49 shall determine eligibility for low income families under Section  
50 1931 of the federal Social Security Act and shall redetermine  
51 eligibility for those continuing under Title IV-A grants.

52 (2) Those qualified for Supplemental Security Income  
53 (SSI) benefits under Title XVI of the federal Social Security Act,  
54 as amended, and those who are deemed SSI eligible as contained in  
55 federal statute. The eligibility of individuals covered in this  
56 paragraph shall be determined by the Social Security  
57 Administration and certified to the Division of Medicaid.

58 (3) Qualified pregnant women who would be eligible for  
59 Medicaid as a low income family member under Section 1931 of the  
60 federal Social Security Act if her child were born. The  
61 eligibility of the individuals covered under this paragraph shall  
62 be determined by the division.

63 (4) [Deleted]

64 (5) A child born on or after October 1, 1984, to a  
65 woman eligible for and receiving Medicaid under the state plan on  
66 the date of the child's birth shall be deemed to have applied for  
67 Medicaid and to have been found eligible for Medicaid under the  
68 plan on the date of that birth, and will remain eligible for  
69 Medicaid for a period of one (1) year so long as the child is a  
70 member of the woman's household and the woman remains eligible for  
71 Medicaid or would be eligible for Medicaid if pregnant. The  
72 eligibility of individuals covered in this paragraph shall be  
73 determined by the Division of Medicaid.

74           (6) Children certified by the State Department of Human  
75 Services to the Division of Medicaid of whom the state and county  
76 departments of human services have custody and financial  
77 responsibility, and children who are in adoptions subsidized in  
78 full or part by the Department of Human Services, including  
79 special needs children in non-Title IV-E adoption assistance, who  
80 are approvable under Title XIX of the Medicaid program. The  
81 eligibility of the children covered under this paragraph shall be  
82 determined by the State Department of Human Services.

83           (7) (a) Persons certified by the Division of Medicaid  
84 who are patients in a medical facility (nursing home, hospital,  
85 tuberculosis sanatorium or institution for treatment of mental  
86 diseases), and who, except for the fact that they are patients in  
87 that medical facility, would qualify for grants under Title IV,  
88 Supplementary Security Income (SSI) benefits under Title XVI or  
89 state supplements, and those aged, blind and disabled persons who  
90 would not be eligible for Supplemental Security Income (SSI)  
91 benefits under Title XVI or state supplements if they were not  
92 institutionalized in a medical facility but whose income is below  
93 the maximum standard set by the Division of Medicaid, which  
94 standard shall not exceed that prescribed by federal regulation;

95           (b) Individuals who have elected to receive  
96 hospice care benefits and who are eligible using the same criteria  
97 and special income limits as those in institutions as described in  
98 subparagraph (a) of this paragraph (7).

99           (8) Children under eighteen (18) years of age and  
100 pregnant women (including those in intact families) who meet the  
101 financial standards of the state plan approved under Title IV-A of  
102 the federal Social Security Act, as amended. The eligibility of  
103 children covered under this paragraph shall be determined by the  
104 Division of Medicaid.

105           (9) Individuals who are:

106                   (a) Children born after September 30, 1983, who  
107 have not attained the age of nineteen (19), with family income  
108 that does not exceed one hundred percent (100%) of the nonfarm  
109 official poverty level;

110                   (b) Pregnant women, infants and children who have  
111 not attained the age of six (6), with family income that does not  
112 exceed one hundred thirty-three percent (133%) of the federal  
113 poverty level; and

114                   (c) Pregnant women and infants who have not  
115 attained the age of one (1), with family income that does not  
116 exceed one hundred eighty-five percent (185%) of the federal  
117 poverty level.

118           The eligibility of individuals covered in (a), (b) and (c) of  
119 this paragraph shall be determined by the division.

120                   (10) Certain disabled children age eighteen (18) or  
121 under who are living at home, who would be eligible, if in a  
122 medical institution, for SSI or a state supplemental payment under  
123 Title XVI of the federal Social Security Act, as amended, and  
124 therefore for Medicaid under the plan, and for whom the state has  
125 made a determination as required under Section 1902(e)(3)(b) of  
126 the federal Social Security Act, as amended. The eligibility of  
127 individuals under this paragraph shall be determined by the  
128 Division of Medicaid.

129                   (11) Individuals who are sixty-five (65) years of age  
130 or older or are disabled as determined under Section 1614(a)(3) of  
131 the federal Social Security Act, as amended, and whose income does  
132 not exceed one hundred thirty-five percent (135%) of the nonfarm  
133 official poverty line as defined by the Office Of Management and  
134 Budget and revised annually, and whose resources do not exceed  
135 those established by the Division of Medicaid. The eligibility of  
136 individuals covered under this paragraph shall be determined by  
137 the Division of Medicaid.

138           (12) Individuals who are qualified Medicare  
139 beneficiaries (QMB) entitled to Part A Medicare as defined under  
140 Section 301, Public Law 100-360, known as the Medicare  
141 Catastrophic Coverage Act of 1988, and whose income does not  
142 exceed one hundred percent (100%) of the nonfarm official poverty  
143 level as defined by the Office of Management and Budget and  
144 revised annually.

145           The eligibility of individuals covered under this paragraph  
146 shall be determined by the Division of Medicaid, and those  
147 individuals determined eligible shall receive Medicare  
148 cost-sharing expenses only as more fully defined by the Medicare  
149 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of  
150 1997.

151           (13) (a) Individuals who are entitled to Medicare Part  
152 A as defined in Section 4501 of the Omnibus Budget Reconciliation  
153 Act of 1990, and whose income does not exceed one hundred twenty  
154 percent (120%) of the nonfarm official poverty level as defined by  
155 the Office of Management and Budget and revised annually.  
156 Eligibility for Medicaid benefits is limited to full payment of  
157 Medicare Part B premiums.

158           (b) Individuals entitled to Part A of Medicare,  
159 with income above one hundred twenty percent (120%), but less than  
160 one hundred thirty-five percent (135%) of the federal poverty  
161 level, and not otherwise eligible for Medicaid Eligibility for  
162 Medicaid benefits is limited to full payment of Medicare Part B  
163 premiums. The number of eligible individuals is limited by the  
164 availability of the federal capped allocation at one hundred  
165 percent (100%) of federal matching funds, as more fully defined in  
166 the Balanced Budget Act of 1997.

167           The eligibility of individuals covered under this paragraph  
168 shall be determined by the Division of Medicaid.

169           (14) [Deleted]

170           (15) Disabled workers who are eligible to enroll in  
171 Part A Medicare as required by Public Law 101-239, known as the  
172 Omnibus Budget Reconciliation Act of 1989, and whose income does  
173 not exceed two hundred percent (200%) of the federal poverty level  
174 as determined in accordance with the Supplemental Security Income  
175 (SSI) program. The eligibility of individuals covered under this  
176 paragraph shall be determined by the Division of Medicaid and  
177 those individuals shall be entitled to buy-in coverage of Medicare  
178 Part A premiums only under the provisions of this paragraph (15).

179           (16) In accordance with the terms and conditions of  
180 approved Title XIX waiver from the United States Department of  
181 Health and Human Services, persons provided home- and  
182 community-based services who are physically disabled and certified  
183 by the Division of Medicaid as eligible due to applying the income  
184 and deeming requirements as if they were institutionalized.

185           (17) In accordance with the terms of the federal  
186 Personal Responsibility and Work Opportunity Reconciliation Act of  
187 1996 (Public Law 104-193), persons who become ineligible for  
188 assistance under Title IV-A of the federal Social Security Act, as  
189 amended, because of increased income from or hours of employment  
190 of the caretaker relative or because of the expiration of the  
191 applicable earned income disregards, who were eligible for  
192 Medicaid for at least three (3) of the six (6) months preceding  
193 the month in which the ineligibility begins, shall be eligible for  
194 Medicaid for up to twelve (12) months. The eligibility of the  
195 individuals covered under this paragraph shall be determined by  
196 the division.

197           (18) Persons who become ineligible for assistance under  
198 Title IV-A of the federal Social Security Act, as amended, as a  
199 result, in whole or in part, of the collection or increased  
200 collection of child or spousal support under Title IV-D of the  
201 federal Social Security Act, as amended, who were eligible for  
202 Medicaid for at least three (3) of the six (6) months immediately

203 preceding the month in which the ineligibility begins, shall be  
204 eligible for Medicaid for an additional four (4) months beginning  
205 with the month in which the ineligibility begins. The eligibility  
206 of the individuals covered under this paragraph shall be  
207 determined by the division.

208 (19) Disabled workers, whose incomes are above the  
209 Medicaid eligibility limits, but below two hundred fifty percent  
210 (250%) of the federal poverty level, shall be allowed to purchase  
211 Medicaid coverage on a sliding fee scale developed by the Division  
212 of Medicaid.

213 (20) Medicaid eligible children under age eighteen (18)  
214 shall remain eligible for Medicaid benefits until the end of a  
215 period of twelve (12) months following an eligibility  
216 determination, or until such time that the individual exceeds age  
217 eighteen (18).

218 (21) Women of childbearing age whose family income does  
219 not exceed one hundred eighty-five percent (185%) of the federal  
220 poverty level. The eligibility of individuals covered under this  
221 paragraph (21) shall be determined by the Division of Medicaid,  
222 and those individuals determined eligible shall only receive  
223 family planning services covered under Section 43-13-117(13) and  
224 not any other services covered under Medicaid. However, any  
225 individual eligible under this paragraph (21) who is also eligible  
226 under any other provision of this section shall receive the  
227 benefits to which he or she is entitled under that other  
228 provision, in addition to family planning services covered under  
229 Section 43-13-117(13).

230 The Division of Medicaid shall apply to the United States  
231 Secretary of Health and Human Services for a federal waiver of the  
232 applicable provisions of Title XIX of the federal Social Security  
233 Act, as amended, and any other applicable provisions of federal  
234 law as necessary to allow for the implementation of this paragraph  
235 (21). The provisions of this paragraph (21) shall be implemented

from and after the date that the Division of Medicaid receives the federal waiver.

(22) Persons who are workers with a potentially severe disability, as determined by the division, shall be allowed to purchase Medicaid coverage. The term "worker with a potentially severe disability" means a person who is at least sixteen (16) years of age but under sixty-five (65) years of age, who has a physical or mental impairment that is reasonably expected to cause the person to become blind or disabled as defined under Section 1614(a) of the federal Social Security Act, as amended, if the person does not receive items and services provided under Medicaid.

The eligibility of persons under this paragraph (22) shall be conducted as a demonstration project that is consistent with Section 204 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, for a certain number of persons as specified by the division. The eligibility of individuals covered under this paragraph (22) shall be determined by the Division of Medicaid.

(23) Children certified by the Mississippi Department of Human Services for whom the state and county departments of human services have custody and financial responsibility who are in foster care on their eighteenth birthday as reported by the Mississippi Department of Human Services shall be certified Medicaid eligible by the Division of Medicaid until their twenty-first birthday.

(24) Individuals who have not attained age sixty-five (65), are not otherwise covered by creditable coverage as defined in the Public Health Services Act, and have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with the requirements of that act and who need



treatment for breast or cervical cancer. Eligibility of individuals under this paragraph (24) shall be determined by the Division of Medicaid.

\* \* \*

The division shall redetermine eligibility for all categories of recipients described in each paragraph of this section not less frequently than required by federal law.

**SECTION 2.** Section 27-69-3, Mississippi Code of 1972, is amended as follows:

\* \* \*

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

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

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

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

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

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

(f) "Tobacco" means any cigarettes, cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco, or substitutes therefor, prepared in such manner as to be suitable for smoking in a pipe or cigarette) and including plug and twist

302 chewing tobacco and snuff, when such "tobacco" is manufactured and  
303 prepared for sale or personal consumption. All words used herein  
304 shall be given the meaning as defined in the regulations of the  
305 Treasury Department of the United States of America.

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

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

313 (i) "Distributor" includes every person, except  
314 retailers as defined herein, in the state who manufactures or  
315 produces tobacco or who ships, transports, or imports into this  
316 state, or in any manner acquires or possesses tobacco, and makes a  
317 first sale of the same in the state.

318 (j) "Wholesaler" includes dealers, whose principal  
319 business is that of a wholesale dealer or jobber, who is known to  
320 the retail trade as such, and whose place of business is located  
321 in Mississippi or in a state which affords reciprocity to  
322 wholesalers domiciled in Mississippi, who shall sell any taxable  
323 tobacco to retail dealers only for the purpose of resale.

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

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

335       The word "dealer" is further defined to mean any person,  
336       firm, corporation or association of persons, except retailers as  
337       defined herein, who imports tobacco from any state or foreign  
338       country for distribution, sale, use, or consumption in the State  
339       of Mississippi.

340               (m) "Distributing agent" includes every person in the  
341       state who acts as an agent of any person outside the State of  
342       Mississippi, by receiving tobacco in interstate commerce, and  
343       storing such tobacco in this state subject to distribution, or  
344       delivery upon order from said person outside the state to  
345       distributors, wholesalers, retailers and dealers.

346               (n) "Transient vendor" means and includes every person  
347       commonly and generally termed "peddlers" and every person acting  
348       for himself, or as an agent, employee, salesman, or in any  
349       capacity for another, whether as owner, bailee, or other custodian  
350       of tobacco, and going from person to person, dealer to dealer,  
351       house to house, or place to place, and selling or offering for  
352       sale at retail or wholesale tobacco, and every person who does not  
353       keep a regular place of business open at all times in regular  
354       hours, and every person who goes from person to person, dealer to  
355       dealer, house to house, or place to place, and sells or offers for  
356       sale tobacco which he carries with him, and who delivers the same  
357       at the time of, or immediately after the sale, or without  
358       returning to the place of business operations (a permanent place  
359       of business within the state) between the taking of the order and  
360       the delivery of the tobacco, or

361       All persons who go from person to person, house to house,  
362       place to place, or dealer to dealer, soliciting orders by  
363       exhibiting samples, or taking orders, and thereafter making  
364       delivery of tobacco, or filling the order without carrying or  
365       sending the order to the permanent place of business, and  
366       thereafter making delivery of the tobacco pursuant to the terms of  
367       the order, or

368 All persons who go from person to person, place to place,  
369 house to house, or dealer to dealer, carrying samples and selling  
370 tobacco from samples, and afterwards making delivery without  
371 taking and sending an order therefor to a permanent place of  
372 business for the filling of the order, and delivery of the  
373 tobacco, or the exchange of tobacco having become damaged or  
374 unsalable, or the purchase by tobacco of advertising space, or

375 All persons who have in their possession, or under their  
376 control, any tobacco offered, or to be offered for sale or to be  
377 delivered, unless the sale or delivery thereof is to be made in  
378 pursuance of a bona fide order for the tobacco, to be sold or  
379 delivered, said order to be evidenced by an invoice or memorandum.

380 (o) "Contraband tobacco" means all tobacco found in the  
381 possession of any person whose permit to engage in dealing in  
382 tobacco has been revoked by the commissioner; and any cigarettes  
383 found in the possession of any person to which the proper tax  
384 stamps have not been affixed; and any cigarettes improperly  
385 stamped when found in the possession of any person; and all other  
386 tobacco upon which the excise tax has not been paid.

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

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

392 (r) "Stamp" or "stamping," or the import of such word,  
393 when used in this chapter, means any manner of stamp or impression  
394 permitted by the commissioner that carries out the purposes of the  
395 chapter in clearly indicating upon the packages of cigarettes  
396 taxed the due payment of the tax and clearly identifying, by  
397 serial number or otherwise, the permittee who affixed the stamp to  
398 the particular package.

399 (s) "Manufacturer's list price" means the full sales  
400 price at which tobacco is sold or offered for sale by a

manufacturer to the wholesaler or distributor in this state without any deduction for freight, trade discount, cash discounts, special discounts or deals, cash rebates, or any other reduction from the regular selling price. In the event freight charges on shipments to wholesalers or distributors are not paid by the manufacturer, then such freight charges required to be paid by the wholesalers and distributors shall be added to the amount paid to the manufacturer in order to determine "manufacturer's list price." In the case of a wholesaler or distributor whose place of business is located outside this state, the "manufacturer's list price" for tobacco sold in this state by such wholesaler or distributor shall in all cases be considered to be the same as that of a wholesaler or distributor located within this state.

(t) "Tobacco settlement" means the settlement of the case of Mike Moore, Attorney General ex rel. State of Mississippi v. The American Tobacco Company et al. (Chancery Court of Jackson County, Mississippi, Cause No. 94-1429).

(u) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer in the tobacco settlement.

(v) "Participating manufacturer" means a manufacturer of cigarettes that is a participating manufacturer in the tobacco settlement.

**SECTION 3.** Section 27-69-5, Mississippi Code of 1972, is amended as follows:

27-69-5. Every manufacturer, distributor, wholesaler, dealer or retailer who desires to become engaged in the sale or use of tobacco upon which a tax is required to be paid shall file with the commissioner an application for a permit to engage in such business. The application for a permit shall be filed on blanks to be furnished by the commissioner for that purpose. The application must be subscribed and sworn to by the person owning the business, or having an ownership interest therein. If the

434 applicant is a corporation, a duly authorized agent shall execute  
435 the application. The application shall show the name of such  
436 person, and in case of partnership, the name of each partner  
437 thereof, the person's post office address, the location of the  
438 place of business to which the permit shall apply, and the nature  
439 of the business in which engaged, and any other information the  
440 commissioner may require. No manufacturer, distributor,  
441 wholesaler, dealer or retailer shall sell any tobacco until such  
442 application has been filed, the prescribed permit fee paid, and  
443 the permit obtained. Except as otherwise provided in this  
444 paragraph, said permit shall expire on January 31 of each year.  
445 However, a retail permit shall continue in force during the time  
446 that the permit holder to whom it is issued continues in the same  
447 business at the same location unless such permit is revoked by the  
448 commissioner for cause or is revoked pursuant to any provision of  
449 the Mississippi Juvenile Tobacco Access Prevention Act in Sections  
450 97-32-1 through 97-32-23.

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

454 Upon receipt of the application and any permit fee  
455 hereinafter provided for, the commissioner may issue to every  
456 manufacturer, distributor, wholesaler, dealer or retailer, for the  
457 place of business designated, a nonassignable permit, authorizing  
458 the sale or use of tobacco in the state. Said permit shall  
459 provide that the same is revocable, and may be forfeited or  
460 suspended upon violation of any provision of this chapter, the  
461 Mississippi Tobacco Youth Access Prevention Act of 1997 or any  
462 rule or regulation adopted by the commissioner. If such permit  
463 is revoked or suspended, said manufacturer, distributor,  
464 wholesaler, dealer or retailer shall not sell any tobacco from  
465 such place of business until a new permit is granted, or the  
466 suspension of the old permit removed.

467       A permit cannot be transferred from one person to another,  
468 and the permit shall at all times be publicly displayed by the  
469 manufacturer, distributor, wholesaler, dealer or retailer in his  
470 place of business so as to be seen easily by the public. A permit  
471 may be refused to any person previously convicted of violations of  
472 this chapter.

473       **SECTION 4.** Section 27-69-7, Mississippi Code of 1972, is  
474 amended as follows:

475       27-69-7. In addition to the excise tax on each person  
476 selling, using, consuming, handling or distributing tobacco as  
477 hereinafter provided, it is hereby made the duty of the  
478 commissioner to collect a privilege tax of One Hundred Dollars  
479 (\$100.00) for each permit issued to every manufacturer,  
480 distributor, wholesaler or dealer doing business directly or  
481 indirectly in this state. However, the amount of the privilege  
482 tax to be paid for a permit issued for a period of less than  
483 twelve (12) months shall be the proportionate amount of the annual  
484 privilege tax that the number of months, or part of a month,  
485 remaining until the permit expiration date bears to twelve (12)  
486 months, but in no case shall the privilege tax be less than Ten  
487 Dollars (\$10.00).

488       Foreign manufacturers, wholesalers, or distributors shall  
489 secure a permit from the commissioner, upon the payment of a fee  
490 of One Hundred Dollars (\$100.00), and shall agree in an  
491 application sworn to and certified, that the excise tax shall be  
492 paid on all shipments of taxable tobacco into the State of  
493 Mississippi, that the required tax stamps shall be affixed to  
494 cigarettes, and that the commissioner, or his authorized agent,  
495 shall be permitted to inspect and audit their records of tobacco  
496 shipments into the State of Mississippi at any and all reasonable  
497 times.

498       It is further provided that any person who engages in any  
499 business for which a permit is required by this chapter, before

500 procuring a permit, or after the permit is cancelled, shall be  
501 guilty of a misdemeanor, and punishable by a fine of not exceeding  
502 Five Hundred Dollars (\$500.00), nor less than Fifty Dollars  
503 (\$50.00).

504       **SECTION 5.** Section 27-69-11, Mississippi Code of 1972, is  
505 amended as follows:

506       27-69-11. Any person engaged in the business of buying,  
507 selling, manufacturing or distributing within this state, tobacco  
508 as a wholesaler or manufacturer without having secured the  
509 required permit from the commissioner shall be guilty of a  
510 misdemeanor.

511       **SECTION 6.** Section 27-69-13, Mississippi Code of 1972, is  
512 amended as follows:

513       27-69-13. (1) There is \* \* \* imposed, levied and assessed,  
514 to be collected and paid as hereinafter provided in this chapter,  
515 an excise tax on each person or dealer in cigarettes, cigars,  
516 stogies, snuff, chewing tobacco, and smoking tobacco, or  
517 substitutes therefor, upon the sale, use, consumption, handling or  
518 distribution in the State of Mississippi, as follows:

519           (a) On cigarettes, the rate of tax shall be  
520 Eighteen-twentieths of One Cent (18/20 of 1¢) on each cigarette  
521 sold with a maximum length of one hundred twenty (120)  
522 millimeters; any cigarette in excess of this length shall be taxed  
523 as if it were two (2) or more cigarettes. \* \* \* However, if the  
524 federal tax rate on cigarettes in effect on June 1, 1985, is  
525 reduced, then the rate as provided in this paragraph (a) shall be  
526 increased by the amount of the federal tax reduction. The tax  
527 increase shall take effect on the first day of the month following  
528 the effective date of the reduction in the federal tax rate.

529           (b) (i) In addition to the excise tax levied by  
530 paragraph (a), beginning on the first day of the month following  
531 the effective date of House Bill No. 410, 2005 Regular Session,  
532 there is levied an excise tax of Five Cents (5¢) on each cigarette



533 sold with a maximum length of one hundred twenty (120)  
534 millimeters; any cigarette in excess of this length shall be taxed  
535 as if it were two (2) or more cigarettes.

536 (ii) On or before the fifteenth day of the month  
537 following the month of the beginning date of the excise tax on  
538 cigarettes that is levied by subparagraph (i) of this paragraph,  
539 and each succeeding month thereafter, the revenue derived from  
540 that excise tax shall be deposited into the special fund in the  
541 State Treasury to the credit of the Governor's Office-Division of  
542 Medicaid as provided in Section 27-69-75.

543 (c) On cigars, cheroots, stogies, snuff, chewing and  
544 smoking tobacco and all other tobacco products, except cigarettes,  
545 the rate of tax shall be fifteen percent (15%) of the  
546 manufacturer's list price.

547 (d) (i) In addition to the excise tax levied by  
548 paragraph (c), beginning on the first day of the month following  
549 the effective date of House Bill No. 410, 2005 Regular Session,  
550 there is levied an excise tax of ten percent (10%) of the  
551 manufacturer's list price on cigars, cheroots, stogies, snuff,  
552 chewing and smoking tobacco and all other tobacco products, except  
553 cigarettes.

554 (ii) On or before the fifteenth day of the month  
555 following the month of the beginning date of the excise tax on  
556 other tobacco products, except cigarettes, that is levied by  
557 subparagraph (i) of this paragraph, and each succeeding month  
558 thereafter, the revenue derived from that excise tax shall be  
559 deposited into the special fund in the State Treasury to the  
560 credit of the Governor's Office-Division of Medicaid as provided  
561 in Section 27-69-75.

562 (2) No stamp evidencing the tax \* \* \* levied on cigarettes  
563 by this section shall be of a denomination of less than One Cent  
564 (1¢), and whenever the tax computed at the rates \* \* \* prescribed  
565 on cigarettes in this section is a specified amount, plus a

fractional part of One Cent (1¢), the package shall be stamped for the next full cent. However, the additional face value of stamps purchased to comply with taxes imposed by this section after June 1, 1985, shall be subject to a four percent (4%) discount or compensation to dealers for their services rather than the eight percent (8%) discount or compensation allowed by Section 27-69-31.

(3) Every wholesaler shall purchase stamps as provided in this chapter, and affix the same to all packages of cigarettes handled by him as \* \* \* provided in this section.

(4) The \* \* \* tax levied by this chapter is levied upon the sale, use, gift, possession, or consumption of tobacco within the State of Mississippi, and the impact of the tax levied by this chapter is hereby declared to be on the vendee, user, consumer, or possessor of tobacco in this state. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall thereafter be added to the price of the tobacco and recovered from the ultimate consumer or user.

(5) (a) In addition to the tax imposed under this section, beginning on the first day of the month following the effective date of House Bill No. 410, 2005 Regular Session, there is imposed an equity assessment in the amount of Two Cents (2¢) per cigarette on all cigarettes subject to the tax imposed under this section. The assessment shall be increased annually beginning January 1, 2006, by the amount of three percent (3%) or the increase in the Consumer Price Index, whichever is greater. Such equity assessment is imposed on the manufacturer.

(b) A wholesaler shall provide a manufacturer a report by the tenth day of each month setting forth the number of cigarettes on which stamps were affixed by the wholesaler during the preceding month and identifying such cigarettes by manufacturer, brand and style.

597           (c) A manufacturer shall remit the equity assessment to  
598 the state by the twentieth day of each month for cigarettes on  
599 which stamps were affixed during preceding month.

600           (d) A participating manufacturer shall be allowed a  
601 credit against the equity assessment for the amount of the annual  
602 tobacco settlement installment payments made to the state pursuant  
603 to the tobacco settlement by such manufacturer for the preceding  
604 year.

605           **SECTION 7.** Section 27-69-41, Mississippi Code of 1972, is  
606 amended as follows:

607           27-69-41. If any person subject to the provisions of this  
608 chapter, or any rules or regulations promulgated by the  
609 commissioner under authority hereof, shall be found to have failed  
610 to affix the stamps required, or to have the same affixed as  
611 herein provided, or to pay any tax due hereunder, or to have  
612 violated any of the provisions of this chapter, or rules and  
613 regulations promulgated by the commissioner in the administration  
614 of this chapter, there shall be collected from such person, in  
615 addition to the tax that may be due, a penalty of fifty percent  
616 (50%) of the tax due; and the commissioner, or his duly authorized  
617 representative, may make immediate demand upon such person for the  
618 payment of all such taxes and penalties. Provided, that the  
619 commissioner, for good reason shown, may remit all or any part of  
620 the penalties imposed, but the taxpayer must pay all taxes due and  
621 interest thereon, at the rate of twelve percent (12%) per annum.  
622 The keeping of any unstamped cigarettes or untaxed tobacco at a  
623 place of business where such articles are sold, shall be prima  
624 facie evidence of intent to violate the provisions of this  
625 chapter.

626           If a manufacturer does not pay the equity assessment imposed  
627 under Section 27-69-13(5), the manufacturer may be assessed a  
628 penalty of ten percent (10%) of the amount of the equity  
629 assessment due or the manufacturer's products may be barred from

630 sale or consumption, or both, in this state. If a wholesaler does  
631 not provide a manufacturer with the information required under  
632 Section 27-69-13(5), the commissioner may suspend sales of tobacco  
633 stamps to the wholesaler.

634 All administrative provisions of the Mississippi Sales Tax  
635 Law, including those which fix damages, penalties and interest for  
636 nonpayment of taxes and for noncompliance with the provisions of  
637 said chapter, and all other requirements and duties imposed upon  
638 taxpayers, shall apply to all persons liable for taxes under the  
639 provisions of this chapter, and the commissioner shall exercise  
640 all the power and authority and perform all the duties with  
641 respect to taxpayers under this chapter as are provided in the  
642 Sales Tax Law, except where there is conflict, then the provisions  
643 of this chapter shall control.

644 **SECTION 8.** Section 27-69-75, Mississippi Code of 1972, is  
645 amended as follows:

646 27-69-75. (1) All taxes levied by this chapter shall be  
647 payable to the commissioner in cash, or by personal check,  
648 cashier's check, bank exchange, post office money order or express  
649 money order, and shall be deposited by the commissioner in the  
650 State Treasury on the same day collected. No remittance other  
651 than cash shall be a final discharge of liability for the  
652 tax \* \* \* assessed and levied under this chapter, unless and until  
653 it has been paid in cash to the commissioner.

654 (2) The revenue derived from the taxes levied in subsections  
655 (1)(b) and (1)(d) of Section 27-69-13 and the assessment imposed  
656 under subsection (5) of Section 27-69-13 shall be deposited into  
657 the special fund in the State Treasury to the credit of the  
658 Governor's Office-Division of Medicaid to be expended by the  
659 division first (a) to fully fund Medicaid services for persons  
660 eligible for Medicaid under Section 43-11-115(11) (the Poverty  
661 Level Aged and Disabled (PLAD) group) and then (b) for any other  
662 purposes authorized under the Mississippi Medicaid Law.

663       (3) All tobacco taxes collected, including tobacco license  
664 taxes, except for those revenues required to be deposited into the  
665 special fund as provided in subsection (2) of this section, shall  
666 be deposited into the State Treasury to the credit of the General  
667 Fund.

668       (4) Wholesalers who are entitled to purchase stamps at a  
669 discount, as provided by Section 27-69-31, may have consigned to  
670 them, without advance payment, those stamps, if and when the  
671 wholesaler \* \* \* gives to the commissioner a good and sufficient  
672 bond executed by some surety company authorized to do business in  
673 this state, conditioned to secure the payment for the stamps so  
674 consigned. The commissioner shall require payment for those  
675 stamps not later than thirty (30) days from the date the stamps  
676 were consigned.

677       **SECTION 9.** This act shall take effect and be in force from  
678 and after its passage.