

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

To: Medicaid; Ways and Means

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 THROUGH DECEMBER 31, 2005; TO AMEND SECTIONS
4 27-69-3, 27-69-5, 27-69-7, 27-69-11, 27-69-13 AND 27-69-41,
5 MISSISSIPPI CODE OF 1972, TO INCREASE THE EXCISE TAX ON CIGARETTES
6 AND OTHER TOBACCO PRODUCTS; TO DEFINE THE TERMS "TOBACCO
7 SETTLEMENT", "NONPARTICIPATING MANUFACTURER" AND "PARTICIPATING
8 MANUFACTURER" FOR PURPOSES OF THE STATE TOBACCO TAX LAW; TO
9 REQUIRE THAT CIGARETTE MANUFACTURERS PAY AN EQUITY ASSESSMENT OF
10 TWO CENTS PER CIGARETTE ON ALL CIGARETTES SUBJECT TO THE CIGARETTE
11 EXCISE TAX; TO PROVIDE THAT SUCH EQUITY ASSESSMENT SHALL BE
12 INCREASED ANNUALLY BY THREE PERCENT OR THE INCREASE IN THE
13 CONSUMER PRICE INDEX WHICHEVER IS GREATER; TO PROVIDE THAT
14 CIGARETTE WHOLESALERS MUST PROVIDE CIGARETTE MANUFACTURERS MONTHLY
15 REPORTS SETTING FORTH THE NUMBER OF CIGARETTES ON WHICH TOBACCO
16 TAX STAMPS WERE AFFIXED DURING THE PRECEDING MONTH AND IDENTIFYING
17 SUCH CIGARETTES BY MANUFACTURER, BRAND AND STYLE; TO PROVIDE A
18 CREDIT AGAINST THE EQUITY ASSESSMENT FOR ANNUAL TOBACCO SETTLEMENT
19 INSTALLMENTS MADE BY PARTICIPATING MANUFACTURERS; TO PROVIDE
20 PENALTIES FOR THE FAILURE OF A CIGARETTE MANUFACTURER TO PAY THE
21 EQUITY ASSESSMENT; TO PROVIDE PENALTIES FOR THE FAILURE OF A
22 WHOLESALER TO PROVIDE INFORMATION TO A MANUFACTURER NECESSARY FOR
23 THE MANUFACTURER TO COMPUTE THE EQUITY ASSESSMENT; TO AMEND
24 SECTION 27-69-75, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
25 REVENUE DERIVED FROM THE TAX INCREASES AND THE EQUITY ASSESSMENT
26 PROVIDED FOR BY THIS ACT SHALL BE DEPOSITED INTO THE SPECIAL FUND
27 IN THE STATE TREASURY TO THE CREDIT OF THE GOVERNOR'S
28 OFFICE-DIVISION OF MEDICAID; AND 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. This paragraph (11) shall stand
138 repealed on January 1, 2006.

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

146 The eligibility of individuals covered under this paragraph
147 shall be determined by the Division of Medicaid, and those
148 individuals determined eligible shall receive Medicare
149 cost-sharing expenses only as more fully defined by the Medicare
150 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of
151 1997.

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

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

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

170 (14) [Deleted]

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

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

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

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

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

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

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

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

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

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

239 (22) Persons who are workers with a potentially severe
240 disability, as determined by the division, shall be allowed to
241 purchase Medicaid coverage. The term "worker with a potentially
242 severe disability" means a person who is at least sixteen (16)
243 years of age but under sixty-five (65) years of age, who has a
244 physical or mental impairment that is reasonably expected to cause
245 the person to become blind or disabled as defined under Section
246 1614(a) of the federal Social Security Act, as amended, if the
247 person does not receive items and services provided under
248 Medicaid.

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

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

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

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

273 * * *

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

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

279 * * *

280 27-69-3. When used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427 27-69-5. Every manufacturer, distributor, wholesaler, dealer
428 or retailer who desires to become engaged in the sale or use of
429 tobacco upon which a tax is required to be paid shall file with
430 the commissioner an application for a permit to engage in such
431 business. The application for a permit shall be filed on blanks
432 to be furnished by the commissioner for that purpose. The
433 application must be subscribed and sworn to by the person owning
434 the business, or having an ownership interest therein. If the

435 applicant is a corporation, a duly authorized agent shall execute
436 the application. The application shall show the name of such
437 person, and in case of partnership, the name of each partner
438 thereof, the person's post office address, the location of the
439 place of business to which the permit shall apply, and the nature
440 of the business in which engaged, and any other information the
441 commissioner may require. No manufacturer, distributor,
442 wholesaler, dealer or retailer shall sell any tobacco until such
443 application has been filed, the prescribed permit fee paid, and
444 the permit obtained. Except as otherwise provided in this
445 paragraph, said permit shall expire on January 31 of each year.
446 However, a retail permit shall continue in force during the time
447 that the permit holder to whom it is issued continues in the same
448 business at the same location unless such permit is revoked by the
449 commissioner for cause or is revoked pursuant to any provision of
450 the Mississippi Juvenile Tobacco Access Prevention Act in Sections
451 97-32-1 through 97-32-23.

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

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

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

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

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

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

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

501 procuring a permit, or after the permit is cancelled, shall be
502 guilty of a misdemeanor, and punishable by a fine of not exceeding
503 Five Hundred Dollars (\$500.00), nor less than Fifty Dollars
504 (\$50.00).

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

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

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

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

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

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

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

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

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

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

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

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

567 fractional part of One Cent (1¢), the package shall be stamped for
568 the next full cent. However, the additional face value of stamps
569 purchased to comply with taxes imposed by this section after June
570 1, 1985, shall be subject to a four percent (4%) discount or
571 compensation to dealers for their services rather than the eight
572 percent (8%) discount or compensation allowed by Section 27-69-31.

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

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

584 (5) (a) In addition to the tax imposed under this section,
585 beginning on the first day of the month following the effective
586 date of House Bill No. 410, 2005 Regular Session, there is imposed
587 an equity assessment in the amount of Two Cents (2¢) per cigarette
588 on all cigarettes subject to the tax imposed under this section.
589 The assessment shall be increased annually beginning January 1,
590 2006, by the amount of three percent (3%) or the increase in the
591 Consumer Price Index, whichever is greater. Such equity
592 assessment is imposed on the manufacturer.

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

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

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

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

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

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

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

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

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

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

655 (2) The revenue derived from the taxes levied in subsections
656 (1)(b) and (1)(d) of Section 27-69-13 and the assessment imposed
657 under subsection (5) of Section 27-69-13 shall be deposited into
658 the special fund in the State Treasury to the credit of the
659 Governor's Office-Division of Medicaid to be expended by the
660 division for the purposes authorized under the Mississippi
661 Medicaid Law.

662 (3) All tobacco taxes collected, including tobacco license
663 taxes, except for those revenues required to be deposited into the

664 special fund as provided in subsection (2) of this section, shall
665 be deposited into the State Treasury to the credit of the General
666 Fund.

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

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