

## REPORT OF CONFERENCE COMMITTEE

**MADAM PRESIDENT AND MR. SPEAKER:**

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 3084: Tobacco and sales tax; increase on cigarettes and reduce the sales tax on certain food sold for human consumption.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

33           **SECTION 1.** Section 27-69-13, Mississippi Code of 1972, is  
34 amended as follows:

35           [Through June 30, 2007, this section shall read as follows:]

36           27-69-13. (1) There is hereby imposed, levied and assessed,  
37 to be collected and paid as hereinafter provided in this chapter,  
38 an excise tax on each person or dealer in cigarettes, cigars,  
39 stogies, snuff, chewing tobacco, and smoking tobacco, or  
40 substitutes therefor, upon the sale, use, consumption, handling or  
41 distribution in the State of Mississippi, as follows:

42           (a) On cigarettes, the rate of tax shall be Four Cents  
43 (4¢) on each cigarette sold with a maximum length of one hundred  
44 twenty (120) millimeters; any cigarette in excess of this length  
45 shall be taxed as if it were two (2) or more cigarettes.  
46 Provided, however, if the federal tax rate on cigarettes in effect  
47 June 1, 1985, is reduced, then the rate as provided herein shall  
48 be increased by the amount of the federal tax reduction. Such tax  
49 increase shall take effect on the first day of the month following  
50 the effective date of such reduction in the federal tax rate.

51           (b) On cigars, cheroots, stogies, snuff, chewing and  
52 smoking tobacco and all other tobacco products except cigarettes,

53 the rate of tax shall be fifteen percent (15%) of the  
54 manufacturer's list price.

55 (2) No stamp evidencing the tax \* \* \* levied on cigarettes  
56 by this section shall be of a denomination of less than One Cent  
57 (1¢), and whenever the tax computed at the rates \* \* \* prescribed  
58 on cigarettes in this section is a specified amount, plus a  
59 fractional part of One Cent (1¢), the package shall be stamped for  
60 the next full cent. \* \* \*

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

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

72 **[From and after July 1, 2007, this section shall read as**  
73 **follows:]**

74 27-69-13. (1) There is hereby imposed, levied and assessed,  
75 to be collected and paid as hereinafter provided in this chapter,  
76 an excise tax on each person or dealer in cigarettes, cigars,  
77 stogies, snuff, chewing tobacco, and smoking tobacco, or  
78 substitutes therefor, upon the sale, use, consumption, handling or  
79 distribution in the State of Mississippi, as follows:

80 (a) On cigarettes, the rate of tax shall be Five Cents  
81 (5¢) on each cigarette sold with a maximum length of one hundred  
82 twenty (120) millimeters; any cigarette in excess of this length  
83 shall be taxed as if it were two (2) or more cigarettes.

84 Provided, however, if the federal tax rate on cigarettes in effect

85 June 1, 1985, is reduced, then the rate as provided herein shall  
86 be increased by the amount of the federal tax reduction. Such tax  
87 increase shall take effect on the first day of the month following  
88 the effective date of such reduction in the federal tax rate.

89 (b) On cigars, cheroots, stogies, snuff, chewing and  
90 smoking tobacco and all other tobacco products except cigarettes,  
91 the rate of tax shall be fifteen percent (15%) of the  
92 manufacturer's list price.

93 (2) No stamp evidencing the tax \* \* \* levied on cigarettes  
94 by this section shall be of a denomination of less than One Cent  
95 (1¢), and whenever the tax computed at the rates \* \* \* prescribed  
96 on cigarettes in this section is a specified amount, plus a  
97 fractional part of One Cent (1¢), the package shall be stamped for  
98 the next full cent. \* \* \*

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

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

110 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is  
111 amended as follows:

112 27-65-75. On or before the fifteenth day of each month, the  
113 revenue collected under the provisions of this chapter during the  
114 preceding month shall be paid and distributed as follows:

115 (1) On or before August 15, 1992, and each succeeding month  
116 thereafter through July 15, 1993, eighteen percent (18%) of the

117 total sales tax revenue collected during the preceding month under  
118 the provisions of this chapter, except that collected under the  
119 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on  
120 business activities within a municipal corporation shall be  
121 allocated for distribution to the municipality and paid to the  
122 municipal corporation. On or before August 15, 1993, and each  
123 succeeding month thereafter through August 15, 2006, eighteen and  
124 one-half percent (18-1/2%) of the total sales tax revenue  
125 collected during the preceding month under the provisions of this  
126 chapter, except that collected under the provisions of Sections  
127 27-65-15, 27-65-19(3) and 27-65-21, on business activities within  
128 a municipal corporation shall be allocated for distribution to the  
129 municipality and paid to the municipal corporation. On or before  
130 September 15, 2006, and each succeeding month thereafter, eighteen  
131 and one-half percent (18-1/2%) of the total sales tax revenue  
132 collected during the preceding month under the provisions of this  
133 chapter, except that collected under the provisions of Sections  
134 27-65-15, 27-65-19(3), 27-65-21 and 27-65-26, on business  
135 activities within a municipal corporation and thirty-seven percent  
136 (37%) of the total sales tax revenue collected during the  
137 preceding month under the provisions of Section 27-65-26 on  
138 business activities within a municipal corporation shall be  
139 allocated for distribution to the municipality and paid to the  
140 municipal corporation.

141 A municipal corporation, for the purpose of distributing the  
142 tax under this subsection, shall mean and include all incorporated  
143 cities, towns and villages.

144 Monies allocated for distribution and credited to a municipal  
145 corporation under this subsection may be pledged as security for  
146 a loan if the distribution received by the municipal corporation  
147 is otherwise authorized or required by law to be pledged as  
148 security for such a loan.

149           In any county having a county seat that is not an  
150 incorporated municipality, the distribution provided under this  
151 subsection shall be made as though the county seat was an  
152 incorporated municipality; however, the distribution to the  
153 municipality shall be paid to the county treasury in which the  
154 municipality is located, and those funds shall be used for road,  
155 bridge and street construction or maintenance in the county.

156           (2) On or before September 15, 1987, and each succeeding  
157 month thereafter, from the revenue collected under this chapter  
158 during the preceding month, One Million One Hundred Twenty-five  
159 Thousand Dollars (\$1,125,000.00) shall be allocated for  
160 distribution to municipal corporations as defined under subsection  
161 (1) of this section in the proportion that the number of gallons  
162 of gasoline and diesel fuel sold by distributors to consumers and  
163 retailers in each such municipality during the preceding fiscal  
164 year bears to the total gallons of gasoline and diesel fuel sold  
165 by distributors to consumers and retailers in municipalities  
166 statewide during the preceding fiscal year. The State Tax  
167 Commission shall require all distributors of gasoline and diesel  
168 fuel to report to the commission monthly the total number of  
169 gallons of gasoline and diesel fuel sold by them to consumers and  
170 retailers in each municipality during the preceding month. The  
171 State Tax Commission shall have the authority to promulgate such  
172 rules and regulations as is necessary to determine the number of  
173 gallons of gasoline and diesel fuel sold by distributors to  
174 consumers and retailers in each municipality. In determining the  
175 percentage allocation of funds under this subsection for the  
176 fiscal year beginning July 1, 1987, and ending June 30, 1988, the  
177 State Tax Commission may consider gallons of gasoline and diesel  
178 fuel sold for a period of less than one (1) fiscal year. For the  
179 purposes of this subsection, the term "fiscal year" means the  
180 fiscal year beginning July 1 of a year.

181           (3) On or before September 15, 1987, and on or before the  
182 fifteenth day of each succeeding month, until the date specified  
183 in Section 65-39-35, the proceeds derived from contractors' taxes  
184 levied under Section 27-65-21 on contracts for the construction or  
185 reconstruction of highways designated under the highway program  
186 created under Section 65-3-97 shall, except as otherwise provided  
187 in Section 31-17-127, be deposited into the State Treasury to the  
188 credit of the State Highway Fund to be used to fund that highway  
189 program. The Mississippi Department of Transportation shall  
190 provide to the State Tax Commission such information as is  
191 necessary to determine the amount of proceeds to be distributed  
192 under this subsection.

193           (4) On or before August 15, 1994, and on or before the  
194 fifteenth day of each succeeding month through July 15, 1999, from  
195 the proceeds of gasoline, diesel fuel or kerosene taxes as  
196 provided in Section 27-5-101(a)(ii)1, Four Million Dollars  
197 (\$4,000,000.00) shall be deposited in the State Treasury to the  
198 credit of a special fund designated as the "State Aid Road Fund,"  
199 created by Section 65-9-17. On or before August 15, 1999, and on  
200 or before the fifteenth day of each succeeding month, from the  
201 total amount of the proceeds of gasoline, diesel fuel or kerosene  
202 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million  
203 Dollars (\$4,000,000.00) or an amount equal to twenty-three and  
204 one-fourth percent (23-1/4%) of those funds, whichever is the  
205 greater amount, shall be deposited in the State Treasury to the  
206 credit of the "State Aid Road Fund," created by Section 65-9-17.  
207 Those funds shall be pledged to pay the principal of and interest  
208 on state aid road bonds heretofore issued under Sections 19-9-51  
209 through 19-9-77, in lieu of and in substitution for the funds  
210 previously allocated to counties under this section. Those funds  
211 may not be pledged for the payment of any state aid road bonds  
212 issued after April 1, 1981; however, this prohibition against the

213 pledging of any such funds for the payment of bonds shall not  
214 apply to any bonds for which intent to issue those bonds has been  
215 published, for the first time, as provided by law before March 29,  
216 1981. From the amount of taxes paid into the special fund under  
217 this subsection and subsection (9) of this section, there shall be  
218 first deducted and paid the amount necessary to pay the expenses  
219 of the Office of State Aid Road Construction, as authorized by the  
220 Legislature for all other general and special fund agencies. The  
221 remainder of the fund shall be allocated monthly to the several  
222 counties in accordance with the following formula:

223           (a) One-third (1/3) shall be allocated to all counties  
224 in equal shares;

225           (b) One-third (1/3) shall be allocated to counties  
226 based on the proportion that the total number of rural road miles  
227 in a county bears to the total number of rural road miles in all  
228 counties of the state; and

229           (c) One-third (1/3) shall be allocated to counties  
230 based on the proportion that the rural population of the county  
231 bears to the total rural population in all counties of the state,  
232 according to the latest federal decennial census.

233           For the purposes of this subsection, the term "gasoline,  
234 diesel fuel or kerosene taxes" means such taxes as defined in  
235 paragraph (f) of Section 27-5-101.

236           The amount of funds allocated to any county under this  
237 subsection for any fiscal year after fiscal year 1994 shall not be  
238 less than the amount allocated to the county for fiscal year  
239 1994.

240           Any reference in the general laws of this state or the  
241 Mississippi Code of 1972 to Section 27-5-105 shall mean and be  
242 construed to refer and apply to subsection (4) of Section  
243 27-65-75.

244 (5) One Million Six Hundred Sixty-six Thousand Six Hundred  
245 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into  
246 the special fund known as the "State Public School Building Fund"  
247 created and existing under the provisions of Sections 37-47-1  
248 through 37-47-67. Those payments into that fund are to be made on  
249 the last day of each succeeding month hereafter.

250 (6) An amount each month beginning August 15, 1983, through  
251 November 15, 1986, as specified in Section 6 of Chapter 542, Laws  
252 of 1983, shall be paid into the special fund known as the  
253 Correctional Facilities Construction Fund created in Section 6 of  
254 Chapter 542, Laws of 1983.

255 (7) On or before August 15, 1992, and each succeeding month  
256 thereafter through July 15, 2000, two and two hundred sixty-six  
257 one-thousandths percent (2.266%) of the total sales tax revenue  
258 collected during the preceding month under the provisions of this  
259 chapter, except that collected under the provisions of Section  
260 27-65-17(2) shall be deposited by the commission into the School  
261 Ad Valorem Tax Reduction Fund created under Section 37-61-35. On  
262 or before August 15, 2000, and each succeeding month thereafter,  
263 two and two hundred sixty-six one-thousandths percent (2.266%) of  
264 the total sales tax revenue collected during the preceding month  
265 under the provisions of this chapter, except that collected under  
266 the provisions of Section 27-65-17(2), shall be deposited into the  
267 School Ad Valorem Tax Reduction Fund created under Section  
268 37-61-35 until such time that the total amount deposited into the  
269 fund during a fiscal year equals Forty-two Million Dollars  
270 (\$42,000,000.00). Thereafter, the amounts diverted under this  
271 subsection (7) during the fiscal year in excess of Forty-two  
272 Million Dollars (\$42,000,000.00) shall be deposited into the  
273 Education Enhancement Fund created under Section 37-61-33 for  
274 appropriation by the Legislature as other education needs and



275 shall not be subject to the percentage appropriation requirements  
276 set forth in Section 37-61-33.

277 (8) On or before August 15, 1992, and each succeeding month  
278 thereafter, nine and seventy-three one-thousandths percent  
279 (9.073%) of the total sales tax revenue collected during the  
280 preceding month under the provisions of this chapter, except that  
281 collected under the provisions of Section 27-65-17(2), shall be  
282 deposited into the Education Enhancement Fund created under  
283 Section 37-61-33.

284 (9) On or before August 15, 1994, and each succeeding month  
285 thereafter, from the revenue collected under this chapter during  
286 the preceding month, Two Hundred Fifty Thousand Dollars  
287 (\$250,000.00) shall be paid into the State Aid Road Fund.

288 (10) On or before August 15, 1994, and each succeeding month  
289 thereafter through August 15, 1995, from the revenue collected  
290 under this chapter during the preceding month, Two Million Dollars  
291 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad  
292 Valorem Tax Reduction Fund established in Section 27-51-105.

293 (11) Notwithstanding any other provision of this section to  
294 the contrary, on or before February 15, 1995, and each succeeding  
295 month thereafter, the sales tax revenue collected during the  
296 preceding month under the provisions of Section 27-65-17(2) and  
297 the corresponding levy in Section 27-65-23 on the rental or lease  
298 of private carriers of passengers and light carriers of property  
299 as defined in Section 27-51-101 shall be deposited, without  
300 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund  
301 established in Section 27-51-105.

302 (12) Notwithstanding any other provision of this section to  
303 the contrary, on or before August 15, 1995, and each succeeding  
304 month thereafter, the sales tax revenue collected during the  
305 preceding month under the provisions of Section 27-65-17(1) on  
306 retail sales of private carriers of passengers and light carriers

307 of property, as defined in Section 27-51-101 and the corresponding  
308 levy in Section 27-65-23 on the rental or lease of these vehicles,  
309 shall be deposited, after diversion, into the Motor Vehicle Ad  
310 Valorem Tax Reduction Fund established in Section 27-51-105.

311 (13) On or before July 15, 1994, and on or before the  
312 fifteenth day of each succeeding month thereafter, that portion of  
313 the avails of the tax imposed in Section 27-65-22 that is derived  
314 from activities held on the Mississippi state fairgrounds complex,  
315 shall be paid into a special fund that is created in the State  
316 Treasury and shall be expended upon legislative appropriation  
317 solely to defray the costs of repairs and renovation at the Trade  
318 Mart and Coliseum.

319 (14) On or before August 15, 1998, and each succeeding month  
320 thereafter through July 15, 2005, that portion of the avails of  
321 the tax imposed in Section 27-65-23 that is derived from sales by  
322 cotton compresses or cotton warehouses and that would otherwise be  
323 paid into the General Fund, shall be deposited in an amount not to  
324 exceed Two Million Dollars (\$2,000,000.00) into the special fund  
325 created under Section 69-37-39.

326 (15) Notwithstanding any other provision of this section to  
327 the contrary, on or before September 15, 2000, and each succeeding  
328 month thereafter, the sales tax revenue collected during the  
329 preceding month under the provisions of Section 27-65-19(1)(f) and  
330 (g)(i)2, shall be deposited, without diversion, into the  
331 Telecommunications Ad Valorem Tax Reduction Fund established in  
332 Section 27-38-7.

333 (16) On or before August 15, 2000, and each succeeding month  
334 thereafter, the sales tax revenue collected during the preceding  
335 month under the provisions of this chapter on the gross proceeds  
336 of sales of a project as defined in Section 57-30-1 shall be  
337 deposited, after all diversions except the diversion provided for

338 in subsection (1) of this section, into the Sales Tax Incentive  
339 Fund created in Section 57-30-3.

340 (17) Notwithstanding any other provision of this section to  
341 the contrary, on or before April 15, 2002, and each succeeding  
342 month thereafter, the sales tax revenue collected during the  
343 preceding month under Section 27-65-23 on sales of parking  
344 services of parking garages and lots at airports shall be  
345 deposited, without diversion, into the special fund created under  
346 Section 27-5-101(d).

347 (18) On or before August 15, 2007, and each succeeding month  
348 thereafter through July 15, 2008, from the sales tax revenue  
349 collected during the preceding month under the provisions of this  
350 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)  
351 shall be deposited into the Special Funds Transfer Fund created in  
352 Section 4 of Chapter 556, Laws of 2003.

353 (19) (a) On or before August 15, 2005, and each succeeding  
354 month thereafter, the sales tax revenue collected during the  
355 preceding month under the provisions of this chapter on the gross  
356 proceeds of sales of a business enterprise located within a  
357 redevelopment project area under the provisions of Sections  
358 57-91-1 through 57-91-11, and the revenue collected on the gross  
359 proceeds of sales from sales made to a business enterprise located  
360 in a redevelopment project area under the provisions of Sections  
361 57-91-1 through 57-91-11 (provided that such sales made to a  
362 business enterprise are made on the premises of the business  
363 enterprise), shall, except as otherwise provided in this  
364 subsection (19), be deposited, after all diversions, into the  
365 Redevelopment Project Incentive Fund as created in Section  
366 57-91-9.

367 (b) For a municipality participating in the Economic  
368 Redevelopment Act created in Sections 57-91-1 through 57-91-11,  
369 the diversion provided for in subsection (1) of this section

370 attributable to the gross proceeds of sales of a business  
371 enterprise located within a redevelopment project area under the  
372 provisions of Sections 57-91-1 through 57-91-11, and attributable  
373 to the gross proceeds of sales from sales made to a business  
374 enterprise located in a redevelopment project area under the  
375 provisions of Sections 57-91-1 through 57-91-11 (provided that  
376 such sales made to a business enterprise are made on the premises  
377 of the business enterprise), shall be deposited into the  
378 Redevelopment Project Incentive Fund as created in Section  
379 57-91-9, as follows:

380 (i) For the first six (6) years in which payments  
381 are made to a developer from the Redevelopment Project Incentive  
382 Fund, one hundred percent (100%) of the diversion shall be  
383 deposited into the fund;

384 (ii) For the seventh year in which such payments  
385 are made to a developer from the Redevelopment Project Incentive  
386 Fund, eighty percent (80%) of the diversion shall be deposited  
387 into the fund;

388 (iii) For the eighth year in which such payments  
389 are made to a developer from the Redevelopment Project Incentive  
390 Fund, seventy percent (70%) of the diversion shall be deposited  
391 into the fund;

392 (iv) For the ninth year in which such payments are  
393 made to a developer from the Redevelopment Project Incentive Fund,  
394 sixty percent (60%) of the diversion shall be deposited into the  
395 fund; and

396 (v) For the tenth year in which such payments are  
397 made to a developer from the Redevelopment Project Incentive Fund,  
398 fifty percent (50%) of the funds shall be deposited into the fund.

399 (20) On or before September 15, 2006, and each succeeding  
400 month thereafter, the following amount of sales tax revenue  
401 collected during the preceding month under the provisions of this

402 chapter shall be deposited, after all diversions, into the  
403 following funds:

404 (a) One Million Three Hundred Five Thousand Dollars  
405 (\$1,305,000.00) into the Education Enhancement Fund created under  
406 Section 37-61-33.

407 (b) Three Hundred Twenty-six Thousand Dollars  
408 (\$326,000.00) into the School Ad Valorem Tax Reduction Fund  
409 created under Section 37-61-35.

410 (21) The remainder of the amounts collected under the  
411 provisions of this chapter shall be paid into the State Treasury  
412 to the credit of the General Fund.

413 (22) It shall be the duty of the municipal officials of any  
414 municipality that expands its limits, or of any community that  
415 incorporates as a municipality, to notify the commissioner of  
416 that action thirty (30) days before the effective date. Failure  
417 to so notify the commissioner shall cause the municipality to  
418 forfeit the revenue that it would have been entitled to receive  
419 during this period of time when the commissioner had no knowledge  
420 of the action. If any funds have been erroneously disbursed to  
421 any municipality or any overpayment of tax is recovered by the  
422 taxpayer, the commissioner may make correction and adjust the  
423 error or overpayment with the municipality by withholding the  
424 necessary funds from any later payment to be made to the  
425 municipality.

426 **SECTION 3.** Section 27-69-31, Mississippi Code of 1972, is  
427 amended as follows:

428 27-69-31. Dealers subject to the provisions of this chapter  
429 shall be allowed, as compensation for their services in affixing  
430 the stamps \* \* \* required by this chapter, a sum equal to eight  
431 percent (8%) of the face value of the stamps purchased by them;  
432 however, the additional face value of stamps purchased to comply  
433 with taxes imposed by Section 27-69-31 after June 1, 1985, and

434 prior to July 1, 2006, shall be subject to a four percent (4%)  
435 discount or compensation to dealers for their services rather than  
436 the eight percent (8%) discount or compensation allowed by this  
437 section, and the additional face value of stamps purchased to  
438 comply with taxes imposed by Section 27-69-31 on or after July 1,  
439 2006, shall be subject to a one percent (1%) discount rather than  
440 the eight percent (8%) discount or compensation allowed by this  
441 section. The commission shall allow no discount on the purchase  
442 of stamps by wholesalers of an aggregate amount of less than One  
443 Hundred Dollars (\$100.00), and by retailers of an aggregate amount  
444 of less than Fifty Dollars (\$50.00) in any one order.

445 \* \* \* The commissioner may, in his discretion, either  
446 reduce the compensation allowed, or disallow any compensation for  
447 the affixing of stamps, for failure of the dealer to comply with  
448 any provisions of the law or rules and regulations promulgated by  
449 the commissioner.

450 **SECTION 4.** The following provision shall be codified as  
451 Section 27-65-26, Mississippi Code of 1972:

452 27-65-26. From and after July 1, 2006, retail sales of food  
453 for human consumption not purchased with food stamps issued by the  
454 United States Department of Agriculture, or other federal agency,  
455 but which would be exempt under paragraph (o) of Section 27-65-111  
456 from the taxes imposed by this chapter if the food items were  
457 purchased with food stamps, shall be taxed at the rate of three  
458 and one-half percent (3-1/2%).

459 **SECTION 5.** Section 27-65-17, Mississippi Code of 1972, is  
460 amended as follows:

461 27-65-17. (1) (a) Except as otherwise provided in this  
462 section, upon every person engaging or continuing within this  
463 state in the business of selling any tangible personal property  
464 whatsoever there is hereby levied, assessed and shall be collected

465 a tax equal to seven percent (7%) of the gross proceeds of the  
466 retail sales of the business.

467 (b) Retail sales of farm tractors shall be taxed at the  
468 rate of one percent (1%) when made to farmers for agricultural  
469 purposes.

470 (c) Retail sales of farm implements sold to farmers and  
471 used directly in the production of poultry, ratite, domesticated  
472 fish as defined in Section 69-7-501, livestock, livestock  
473 products, agricultural crops or ornamental plant crops or used for  
474 other agricultural purposes shall be taxed at the rate of three  
475 percent (3%) when used on the farm. The three percent (3%) rate  
476 shall also apply to all equipment used in logging, pulpwood  
477 operations or tree farming which is either:

478 (i) Self-propelled, or

479 (ii) Mounted so that it is permanently attached to  
480 other equipment which is self-propelled or permanently attached to  
481 other equipment drawn by a vehicle which is self-propelled.

482 (d) Except as otherwise provided in subsection (3) of  
483 this section, retail sales of aircraft, automobiles, trucks,  
484 truck-tractors, semitrailers and mobile homes shall be taxed at  
485 the rate of three percent (3%).

486 (e) Sales of manufacturing machinery or manufacturing  
487 machine parts when made to a manufacturer or custom processor for  
488 plant use only when the machinery and machine parts will be used  
489 exclusively and directly within this state in manufacturing a  
490 commodity for sale, rental or in processing for a fee shall be  
491 taxed at the rate of one and one-half percent (1-1/2%).

492 (f) Sales of machinery and machine parts when made to a  
493 technology intensive enterprise for plant use only when the  
494 machinery and machine parts will be used exclusively and directly  
495 within this state for industrial purposes, including, but not  
496 limited to, manufacturing or research and development activities,

497 shall be taxed at the rate of one and one-half percent (1-1/2%).  
498 In order to be considered a technology intensive enterprise for  
499 purposes of this paragraph:

500 (i) The enterprise shall meet minimum criteria  
501 established by the Mississippi Development Authority;

502 (ii) The enterprise shall employ at least ten (10)  
503 persons in full-time jobs;

504 (iii) At least ten percent (10%) of the workforce  
505 in the facility operated by the enterprise shall be scientists,  
506 engineers or computer specialists;

507 (iv) The enterprise shall manufacture plastics,  
508 chemicals, automobiles, aircraft, computers or electronics; or  
509 shall be a research and development facility, a computer design or  
510 related facility, or a software publishing facility or other  
511 technology intensive facility or enterprise as determined by the  
512 Mississippi Development Authority;

513 (v) The average wage of all workers employed by  
514 the enterprise at the facility shall be at least one hundred fifty  
515 percent (150%) of the state average annual wage; and

516 (vi) The enterprise must provide a basic health  
517 care plan to all employees at the facility.

518 (g) Sales of materials for use in track and track  
519 structures to a railroad whose rates are fixed by the Interstate  
520 Commerce Commission or the Mississippi Public Service Commission  
521 shall be taxed at the rate of three percent (3%).

522 (h) Sales of tangible personal property to electric  
523 power associations for use in the ordinary and necessary operation  
524 of their generating or distribution systems shall be taxed at the  
525 rate of one percent (1%).

526 (i) Wholesale sales of beer shall be taxed at the rate  
527 of seven percent (7%), and the retailer shall file a return and  
528 compute the retail tax on retail sales but may take credit for the



529 amount of the tax paid to the wholesaler on said return covering  
530 the subsequent sales of same property, provided adequate invoices  
531 and records are maintained to substantiate the credit.

532 (j) Wholesale sales of food and drink for human  
533 consumption to full service vending machine operators to be sold  
534 through vending machines located apart from and not connected with  
535 other taxable businesses shall be taxed at the rate of eight  
536 percent (8%).

537 (k) Sales of equipment used or designed for the purpose  
538 of assisting disabled persons, such as wheelchair equipment and  
539 lifts, that is mounted or attached to or installed on a private  
540 carrier of passengers or light carrier of property, as defined in  
541 Section 27-51-101, at the time when the private carrier of  
542 passengers or light carrier of property is sold shall be taxed at  
543 the same rate as the sale of such vehicles under this section.

544 (1) From and after July 1, 2006, retail sales of food  
545 for human consumption not purchased with food stamps issued by the  
546 United States Department of Agriculture, or other federal agency,  
547 but which would be exempt under paragraph (o) of Section 27-65-111  
548 from the taxes imposed by this chapter if the food items were  
549 purchased with food stamps, shall be taxed as provided for in  
550 Section 27-65-26.

551 (2) From and after January 1, 1995, retail sales of private  
552 carriers of passengers and light carriers of property, as defined  
553 in Section 27-51-101, shall be taxed an additional two percent  
554 (2%).

555 (3) In lieu of the tax levied in subsection (1) of this  
556 section, there is levied on retail sales of truck-tractors and  
557 semitrailers used in interstate commerce and registered under the  
558 International Registration Plan (IRP) or any similar reciprocity  
559 agreement or compact relating to the proportional registration of  
560 commercial vehicles entered into as provided for in Section

561 27-19-143, a tax at the rate of three percent (3%) of the portion  
562 of the sale that is attributable to the usage of such  
563 truck-tractor or semitrailer in Mississippi. The portion of the  
564 retail sale that is attributable to the usage of such  
565 truck-tractor or semitrailer in Mississippi is the retail sales  
566 price of the truck-tractor or semitrailer multiplied by the  
567 percentage of the total miles traveled by the vehicle that are  
568 traveled in Mississippi. The tax levied pursuant to this  
569 subsection (3) shall be collected by the State Tax Commission from  
570 the purchaser of such truck-tractor or semitrailer at the time of  
571 registration of such truck-tractor or semitrailer.

572 (4) A manufacturer selling at retail in this state shall be  
573 required to make returns of the gross proceeds of such sales and  
574 pay the tax imposed in this section.

575 (5) Any person exercising any privilege taxable under  
576 Section 27-65-15 and selling his natural resource products at  
577 wholesale or to exempt persons shall pay the tax levied by said  
578 section in lieu of the tax levied by this section.

579 **SECTION 6.** The purpose of Sections 6 through 18 of this act  
580 is to:

581 (a) Prevent nonsettling manufacturers from undermining  
582 this state's policy of discouraging underage smoking by offering  
583 cigarettes and cigarette tobacco products at prices that are  
584 substantially below the prices of cigarettes and cigarette tobacco  
585 products of other manufacturers;

586 (b) Protect the tobacco settlement agreement, and  
587 funding, which has been reduced because of the growth of sales of  
588 nonsettling-manufacturer cigarettes and cigarette tobacco  
589 products, for programs that are funded wholly or partly by  
590 payments to this state under the tobacco settlement agreement and  
591 recoup for this state settlement payment revenue lost because of

592 sales of nonsettling-manufacturer cigarettes and cigarette tobacco  
593 products;

594 (c) Provide funding to enforce and administer Sections  
595 6 through 18 of this act and any legislation relating to  
596 nonsettling manufacturers; and

597 (d) Provide funding for any other purpose the  
598 Legislature determines.

599 **SECTION 7.** As used in Sections 6 through 18 of this act:

600 (a) "Brand family" means each style of cigarettes or  
601 cigarette tobacco products sold under the same trademark and  
602 differentiated from one another by means of additional modifiers,  
603 including "menthol," "lights," "kings," and "100s." The term  
604 includes any style of cigarettes or cigarette tobacco products  
605 that have a brand name, trademark, logo, symbol, motto, selling  
606 message, recognizable pattern of colors, or other indication of  
607 product identification that is identical to, similar to, or  
608 identifiable with a previously known brand of cigarettes or  
609 cigarette tobacco products.

610 (b) "Cigarette" means any product that contains  
611 nicotine and is intended to be burned or heated under ordinary  
612 conditions of use. The term includes:

613 (i) A roll of tobacco wrapped in paper or another  
614 substance that does not contain tobacco;

615 (ii) Tobacco, in any form, that is functional in a  
616 product that, because of the product's appearance, the type of  
617 tobacco used in the filler, or the product's packaging and  
618 labeling, is likely to be offered to or purchased by a consumer as  
619 a cigarette; or

620 (iii) A roll of tobacco wrapped in any substance  
621 containing tobacco that, because of the product's appearance, the  
622 type of tobacco used in the filler, or the product's packaging and

623 labeling, is likely to be offered to or purchased by a consumer as  
624 a cigarette.

625 (c) "Cigarette tobacco product" means roll-your-own  
626 tobacco or tobacco that, because of the tobacco's appearance,  
627 type, packaging, or labeling, is suitable for use in making  
628 cigarettes and is likely to be offered to or purchased by a  
629 consumer for that purpose.

630 (d) "Commissioner" means the Chairman of the State Tax  
631 Commission and his authorized agents and employees.

632 (e) "Manufacturer" means a person that manufactures,  
633 fabricates or assembles cigarettes for sale or distribution. For  
634 purposes of Sections 6 through 18 of this act, the term includes a  
635 person that is the first importer into the United States of  
636 cigarettes and cigarette tobacco products manufactured outside the  
637 United States.

638 (f) "Master settlement agreement" means the settlement  
639 agreement and related documents entered into in 1998 by forty-six  
640 (46) states and leading United States tobacco manufacturers.

641 (g) "Nonsettling manufacturer" means a manufacturer of  
642 cigarettes that did not sign the tobacco settlement agreement.

643 (h) "Nonsettling-manufacturer cigarettes" means  
644 cigarettes manufactured, fabricated, assembled or imported by a  
645 nonsettling manufacturer.

646 (i) "Nonsettling manufacturer cigarette tobacco  
647 products" means cigarette tobacco products manufactured,  
648 fabricated assembled or imported by a nonsettling manufacturer.

649 (j) "Tobacco settlement agreement" means the  
650 Comprehensive Settlement Agreement and Release filed December 29,  
651 1997, in the Chancery Court of Jackson County, State of  
652 Mississippi, in the case styled In Re Mike Moore, Attorney  
653 General, ex rel. State of Mississippi Tobacco Litigation, Cause  
654 No. 94-1429, and all subsequent amendments thereto.

655 (k) "Distributor" shall have the same meaning ascribed  
656 to that term in Section 27-69-3.

657 **SECTION 8.** (1) A fee is imposed on the sale, use,  
658 consumption or distribution in this state of:

659 (a) Nonsettling-manufacturer cigarettes if a stamp is  
660 required to be affixed to a package of those cigarettes under the  
661 Tobacco Tax Law;

662 (b) Nonsettling-manufacturer cigarettes that are sold,  
663 purchased or distributed in this state but that are not required  
664 to have a stamp affixed to a package of those cigarettes under the  
665 Tobacco Tax Law; and

666 (c) Nonsettling manufacturer cigarette tobacco products  
667 that are subject to the tax imposed by Section 27-69-13.

668 (2) The fee imposed by Sections 6 through 18 of this act  
669 does not apply to cigarettes or cigarette tobacco products that  
670 are included in computing payments due to be made by a settling  
671 manufacturer under the tobacco settlement agreement.

672 (3) The fee imposed by Sections 6 through 18 of this act is  
673 in addition to any other privilege, license, fee or tax required  
674 or imposed by state law.

675 (4) Except as otherwise provided by Sections 6 through 18 of  
676 this act, the fee imposed by Sections 6 through 18 of this act is  
677 imposed, collected, paid, administered, and enforced in the same  
678 manner, taking into account that the fee is imposed on nonsettling  
679 manufacturers, as the taxes imposed by the Tobacco Tax Law, as  
680 appropriate.

681 **SECTION 9.** (1) Except as provided by subsection (2) of this  
682 section, the fee is imposed at the rate of Two and  
683 Three-twentieths Cents (2-3/20¢) for:

684 (a) Each nonsettling-manufacturer cigarette; and

685 (b) Each nine one-hundredths (0.09) ounce of  
686 nonsettling-manufacturer cigarette tobacco product.

687 (2) On January 1 of each year, the fee prescribed by  
688 subsection (1) of this section shall increase by the greater of:

689 (a) Three percent (3%); or

690 (b) The percentage increase in the most recent annual  
691 revised Consumer Price Index for all Urban Consumers, as published  
692 by the Federal Bureau of Labor Statistics of the United States  
693 Department of Labor.

694 (3) The revenue collected from the fee imposed by this  
695 section shall be deposited into the State General Fund.

696 **SECTION 10.** (1) A distributor required to file a monthly  
697 report under Section 27-69-35, shall, in addition to the  
698 information required by that section, include in the report the  
699 following information:

700 (a) The number and denominations of stamps affixed to  
701 individual packages of nonsettling manufacturer cigarettes during  
702 the preceding month;

703 (b) The number of individual packages of nonsettling  
704 manufacturer cigarettes sold or purchased in this state or  
705 otherwise distributed in this state for sale in the United States;  
706 and

707 (c) Any other information the commissioner considers  
708 necessary or appropriate to determine the amount of the fee  
709 imposed by Sections 6 through 18 of this act or to enforce  
710 Sections 6 through 18 of this act.

711 (2) The information required by subsection (1)(a) and (b)  
712 must be itemized for each place of business and by manufacturer  
713 and brand family.

714 (3) The requirement to report information under this section  
715 shall be enforced in the same manner as the requirement to deliver  
716 to or file with the comptroller a report required under the  
717 Tobacco Tax Law.

718           **SECTION 11.** (1) Each month, not later than the 10th day  
719 after the date the commissioner receives the information required  
720 by Section 10 of this act, the commissioner shall:

721                   (a) Compute the amount of the fee imposed by Sections 6  
722 through 18 of this act that each nonsettling manufacturer owes for  
723 that reporting period based on that information and any other  
724 information available to the commissioner; and

725                   (b) Mail to each nonsettling manufacturer a notice of  
726 the amount of fee the manufacturer owes.

727           (2) Not later than the 15th day of the month after the month  
728 in which the commissioner mails a nonsettling manufacturer a  
729 notice under subsection (1) of this section, the nonsettling  
730 manufacturer shall send to the commissioner the amount of the fee  
731 due according to the notice.

732           **SECTION 12.** (1) Not later than the first day of each month,  
733 a nonsettling manufacturer who is required to pay the fee imposed  
734 by Sections 6 through 18 of this act shall certify to the Attorney  
735 General that the manufacturer is in compliance with Sections 6  
736 through 18 of this act and has paid in full the fee imposed by  
737 Sections 6 through 18 of this act.

738           (2) The Attorney General shall develop, maintain and publish  
739 on the Attorney General's Internet Web site a directory listing of  
740 all nonsettling manufacturers that have been provided current,  
741 accurate and complete certifications. The listing shall also  
742 include all manufacturers of cigarettes that signed the tobacco  
743 settlement agreement.

744           (3) The Attorney General shall provide the list described by  
745 subsection (2) of this section to any person on request.

746           **SECTION 13.** (1) If cigarettes or cigarette tobacco products  
747 of a nonsettling manufacturer are not offered for sale or  
748 distribution in this state on September 1, 2006, the nonsettling  
749 manufacturer may not offer those cigarettes or cigarette tobacco

750 products for sale or distribution in this state after that date  
751 unless the manufacturer first prepays the fee imposed by Sections  
752 6 through 18 of this act for sales of cigarettes and cigarette  
753 tobacco products that will occur in the first calendar month in  
754 which they are sold or distributed in this state.

755 (2) The amount a nonsettling manufacturer is required to  
756 prepay under this section is equal to the greater of:

757 (a) The rate prescribed by Section 9 of this act in  
758 effect on that date multiplied by:

759 (i) The number of cigarettes the commissioner  
760 reasonably projects that the nonsettling manufacturer will sell or  
761 distribute in this state during that calendar month; and

762 (ii) Each nine one-hundredths (0.09) ounce of  
763 nonsettling manufacturer cigarette tobacco products the  
764 commissioner reasonably projects that the nonsettling manufacturer  
765 will sell or distribute in this state during that calendar month;  
766 or

767 (b) Fifty Thousand Dollars (\$50,000.00).

768 (3) The fee imposed by this section does not apply to  
769 cigarettes or cigarette tobacco products that are included in  
770 computing payments due to be made by a settling manufacturer under  
771 the tobacco settlement agreement.

772 (4) The commissioner may require a nonsettling manufacturer  
773 to provide any information reasonably necessary to determine the  
774 prepayment amount.

775 (5) The commissioner shall establish procedures to:

776 (a) Reimburse a nonsettling manufacturer if the actual  
777 sales or distributions in the first calendar month are less than  
778 the projected sales or distributions; and

779 (b) Require additional payments if the actual sales or  
780 distributions in the first calendar month are greater than the  
781 projected sales or distributions.



782 (6) A nonsettling manufacturer shall pay the fee imposed by  
783 Sections 6 through 18 of this act in the manner provided by  
784 Section 27-69-91, beginning in the second calendar month in which  
785 the manufacturer offers the cigarettes or cigarette tobacco  
786 products for sale or distribution in this state.

787 **SECTION 14.** (1) In addition to prepaying the fee required  
788 by Section 13 of this act, a nonsettling manufacturer described by  
789 Section 13(1) of this act shall, before the date the cigarettes or  
790 cigarette tobacco products are offered for sale or distribution in  
791 this state, provide to the Attorney General on a form prescribed  
792 by the Attorney General:

793 (a) The nonsettling manufacturer's complete name,  
794 address and telephone number;

795 (b) The date that the nonsettling manufacturer will  
796 begin offering cigarettes or cigarette tobacco products for sale  
797 or distribution in this state;

798 (c) The names of the brand families of the cigarettes  
799 or cigarette tobacco products that the nonsettling manufacturer  
800 will offer for sale or distribution in this state;

801 (d) A statement that the nonsettling manufacturer  
802 intends to comply with Sections 6 through 18 of this act; and

803 (e) The name, address, telephone number and signature  
804 of an officer of the nonsettling manufacturer attesting to all of  
805 the included information.

806 (2) The Attorney General shall make the information provided  
807 under this section available to the commissioner.

808 **SECTION 15.** (1) Cigarettes and cigarette tobacco products  
809 of a nonsettling manufacturer that has not complied with Sections  
810 6 through 18 of this act, including full payment of the fee  
811 imposed by Sections 6 through 18 of this act, shall be treated as  
812 tobacco for which the tax assessed by the Tobacco Tax Law, has not

813 been paid, and the manufacturer is subject to all penalties  
814 imposed by that act for violations of that act.

815 (2) The commissioner shall provide to a nonsettling  
816 manufacturer and each distributor authorized to affix tax stamps  
817 pursuant to the Tobacco Tax Act, a notice of noncompliance with  
818 Sections 6 through 18 of this act if the manufacturer:

819 (a) Does not pay in full the fee imposed by Sections 6  
820 through 18 of this act; or

821 (b) Is not included on the list described by Section  
822 12(2) of this act.

823 (3) If a nonsettling manufacturer does not appear in the  
824 Attorney General's directory required by Section 12(2) of this  
825 act, or upon receipt of the notice of noncompliance described in  
826 subsection (2) of this section with respect to a nonsettling  
827 manufacturer, no distributor may, with respect to cigarettes  
828 manufactured by such nonsettling manufacturer:

829 (a) Pay the tax imposed by the Tobacco Tax Law;

830 (b) Affix to a package of cigarettes the stamp required  
831 by Section 27-69-15; or

832 (c) Otherwise purchase, sell or distribute cigarettes  
833 manufactured by such nonsettling manufacturer in this state.

834 **SECTION 16.** Any nonsettling manufacturer that complies with  
835 the provisions of Sections 6 through 18 of this act shall be  
836 entitled to the same protections from civil liability as set forth  
837 in the tobacco settlement agreement for settling manufacturers  
838 only if the nonsettling manufacturer also strictly follows the  
839 mandates and restrictions in the tobacco settlement agreement.

840 **SECTION 17.** Sections 6 through 18 of this act applies  
841 without regard to Section 27-69-19, or any other law that might be  
842 read to create an exemption for interstate sales.

843 **SECTION 18.** (1) Not later than September 30, 2006, a  
844 nonsettling manufacturer that is offering cigarettes or cigarette

845 tobacco products for sale or distribution in this state on  
846 September 1, 2006, shall provide to the Attorney General on a form  
847 prescribed by the Attorney General:

848 (a) The nonsettling manufacturer's complete name,  
849 address, and telephone number;

850 (b) The date that the nonsettling manufacturer began  
851 offering cigarettes or cigarette tobacco products for sale or  
852 distribution in this state;

853 (c) The names of the brand families of the cigarettes  
854 or cigarette tobacco products that the nonsettling manufacturer  
855 offers for sale or distribution in this state;

856 (d) A statement that the nonsettling manufacturer  
857 intends to comply with Sections 6 through 18 of this act; and

858 (e) The name, address, telephone number and signature  
859 of an officer of the nonsettling manufacturer attesting to all of  
860 the included information.

861 (2) The Attorney General shall make the information provided  
862 under subsection (1) of this section available to the  
863 commissioner.

864 **SECTION 19.** This act shall take effect and be in force from  
865 and after July 1, 2006.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE EXCISE TAX ON CIGARETTES; TO AMEND SECTION  
3 27-65-75, MISSISSIPPI CODE OF 1972, TO INCREASE THE PERCENTAGE OF  
4 SALES TAX COLLECTED ON RETAIL SALES OF SUCH FOOD WITHIN  
5 MUNICIPALITIES THAT IS DISTRIBUTED TO MUNICIPALITIES, AND TO  
6 REQUIRE A PORTION OF THE MONTHLY TOBACCO TAX REVENUE TO BE  
7 DEPOSITED IN THE EDUCATION ENHANCEMENT FUND AND THE SCHOOL AD  
8 VALOREM TAX REDUCTION FUND; TO AMEND SECTION 27-69-31, MISSISSIPPI  
9 CODE OF 1972, TO PROVIDE FOR A DISCOUNT ON THE ADDITIONAL FACE  
10 VALUE OF STAMPS PURCHASED TO COMPLY WITH CERTAIN CIGARETTE EXCISE  
11 TAX INCREASES; TO CREATE A NEW SECTION 27-65-26, MISSISSIPPI CODE  
12 OF 1972, TO IMPOSE A SEPARATE SALES TAX LEVY ON RETAIL SALES OF  
13 CERTAIN FOOD FOR HUMAN CONSUMPTION AND TO REDUCE THE SALES TAX  
14 RATE ON SUCH FOOD; TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF  
15 1972, IN CONFORMITY THERETO; TO IMPOSE A FEE ON  
16 NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE MONTHLY REPORTING  
17 OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF

18 NONSETTLING-MANUFACTURER CIGARETTES, THE NUMBER OF INDIVIDUAL  
19 PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES SOLD OR PURCHASED  
20 IN THIS STATE OR OTHERWISE DISTRIBUTED IN THIS STATE FOR SALE IN  
21 THE UNITED STATES AND ANY OTHER INFORMATION THE STATE TAX  
22 COMMISSION CONSIDERS NECESSARY OR APPROPRIATE TO DETERMINE THE  
23 AMOUNT OF THE FEE IMPOSED BY THIS ACT OR TO ENFORCE THIS ACT; TO  
24 REQUIRE REGISTRATION OF NONSETTLING MANUFACTURERS WITH THE  
25 ATTORNEY GENERAL; TO REQUIRE DEVELOPMENT, MAINTENANCE AND  
26 PUBLICATION BY THE ATTORNEY GENERAL OF A LIST OF NONSETTLING  
27 MANUFACTURERS THAT HAVE CERTIFIED THEIR COMPLIANCE WITH THIS ACT;  
28 TO PROVIDE FOR ENFORCEMENT OF THE REQUIREMENTS IMPOSED BY THIS  
29 ACT; TO GRANT PROTECTIONS FROM CIVIL LIABILITY TO NONSETTLING  
30 MANUFACTURERS THAT COMPLY WITH THE PROVISIONS OF THIS ACT; AND FOR  
31 RELATED PURPOSES.

CONFEREES FOR THE SENATE

X (SIGNED)  
Robertson

X (SIGNED)  
Tollison

X (SIGNED)  
King

CONFEREES FOR THE HOUSE

X (SIGNED)  
Watson

X (SIGNED)  
Reeves

X (SIGNED)  
Franks