

By: Representatives Watson, Clark, Scott

To: Ways and Means

HOUSE BILL NO. 1409  
(As Passed the House)

1 AN ACT TO IMPOSE A FEE ON NONSETTLING-MANUFACTURER  
2 CIGARETTES; TO PROVIDE DEFINITIONS; TO REQUIRE MONTHLY REPORTING  
3 OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF  
4 NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE REGISTRATION OF  
5 NONSETTLING MANUFACTURERS WITH THE ATTORNEY GENERAL; TO REQUIRE  
6 DEVELOPMENT, MAINTENANCE, AND PUBLICATION BY THE ATTORNEY GENERAL  
7 OF A LIST OF NONSETTLING MANUFACTURERS THAT HAVE CERTIFIED THEIR  
8 COMPLIANCE WITH THIS ACT; TO PROVIDE FOR ENFORCEMENT OF THE  
9 REQUIREMENTS IMPOSED BY THIS ACT; TO PROHIBIT THE TRANSPORT OF  
10 UNSTAMPED CIGARETTES ACROSS STATE LINES; TO PROVIDE FOR REPORTS ON  
11 THE TRANSPORT OF STAMPED CIGARETTES ACROSS STATE LINES; TO PROVIDE  
12 THAT THE REVENUE DERIVED FROM THE FEE IMPOSED UNDER THIS ACT SHALL  
13 BE DEPOSITED INTO SPECIAL FUNDS IN THE STATE TREASURY; TO SPECIFY  
14 THE PURPOSES FOR WHICH THE MONIES IN SUCH SPECIAL FUNDS MAY BE  
15 USED; TO AMEND SECTION 27-69-19, MISSISSIPPI CODE OF 1972, IN  
16 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** The Legislature declares that the following are  
19 the purposes of this act:

20 (a) To recover health care costs to the state imposed  
21 by nonsettling manufacturers;

22 (b) To prevent nonsettling manufacturers from  
23 undermining the state's policy of reducing underage smoking by  
24 offering their cigarettes for sale substantially below the price  
25 of cigarettes of other manufacturers;

26 (c) To protect funding, which is reduced as a result of  
27 the growth of nonsettling-manufacturer cigarette sales, for  
28 programs funded in whole or in part by payments to the state under  
29 the tobacco settlements referred to in Section 2(e) of this act,  
30 and to recoup settlement-payment revenue lost to the state as a  
31 result of nonsettling-manufacturer cigarettes sales; and

32 (d) To fund such other purposes as the Legislature  
33 shall determine.

34           **SECTION 2.** As used in this act, the following terms shall  
35 have the meaning ascribed to them herein:

36           (a) "Commissioner" means the Chairman of the State Tax  
37 Commission of the State of Mississippi, and his authorized agents  
38 and employees.

39           (b) "Consumer Price Index" means the Consumer Price  
40 Index for All Urban Consumers as published by the Bureau of Labor  
41 Statistics of the United States Department of Labor.

42           (c) "Manufacturer" includes, but is not limited to, an  
43 entity that is the first importer into the United States of  
44 cigarettes manufactured abroad.

45           (d) "Master Settlement Agreement" means the settlement  
46 agreement entered into on November 23, 1998, by various states and  
47 leading cigarette manufacturers.

48           (e) "Nonsettling manufacturer" means any tobacco  
49 product manufacturer that has not entered into the settlement  
50 agreements, as amended, in the case of Mike Moore, Attorney  
51 General ex rel. State of Mississippi v. The American Tobacco  
52 Company et al. (Chancery Court of Jackson County, Mississippi,  
53 Cause No. 94-1429).

54           (f) "Nonsettling-manufacturer cigarettes" means  
55 cigarettes of a nonsettling manufacturer.

56           (g) "Subsequent participating manufacturer" means a  
57 manufacturer of cigarettes that is a subsequent participating  
58 manufacturer as defined in the Master Settlement Agreement.

59           **SECTION 3.** (1) Except as otherwise provided in this  
60 section, there is hereby imposed, levied and assessed a fee for  
61 the sale, use, consumption, handling or distribution, in the State  
62 of Mississippi, of nonsettling-manufacturer cigarettes to which a  
63 stamp is required to be affixed by law. The rate of the fee shall  
64 be Two and Three-twentieths Cents (2-3/20¢) on each cigarette, to  
65 be adjusted upward annually each January 1 by the greater of three  
66 percent (3%) or the Consumer Price Index applied each year on the

67 previous year, beginning with the year of enactment of this act.  
68 The fee is in addition to all other privileges, licenses, fees, or  
69 taxes now imposed by law in this state. The commissioner shall  
70 collect the fee each month directly from each nonsettling  
71 manufacturer based on information received under Section 5 of this  
72 act or other information available to the commissioner. Except as  
73 otherwise provided in this act, the fee shall be imposed,  
74 collected, paid, administered, and enforced in the same manner as  
75 the tax on cigarettes assessed by Section 27-69-13.

76 (2) The revenue derived from the fee imposed under this  
77 section shall be deposited into the State Treasury, as follows:

78 (a) Forty percent (40%) of the revenue collected shall  
79 be deposited into the special fund to the credit of the University  
80 of Mississippi Medical Center that is created by Section 10(1) of  
81 this act.

82 (b) Forty percent (40%) of the revenue collected shall  
83 be deposited into the special fund to the credit of the State  
84 Veterans Affairs Board that is created by Section 10(2) of this  
85 act.

86 (c) The remainder of the revenue collected shall be  
87 deposited into the special fund that is created by Section 10(3)  
88 of this act.

89 (3) The fee imposed under this section shall not apply to a  
90 subsequent participating manufacturer until both of the following  
91 have occurred: (a) a final and binding agreement between that  
92 subsequent participating manufacturer and the settling states to  
93 the Master Settlement Agreement providing such subsequent  
94 participating manufacturer with a credit to its Master Settlement  
95 Agreement payments for payments made to Mississippi under this  
96 section has become effective and (b) the Mississippi Attorney  
97 General has received notice from the subsequent participating  
98 manufacturer and the National Association of Attorneys General, as  
99 representative of the settling states, that an agreement

100 acceptable to both sides has been reached. This subsection (3)  
101 shall not apply to any subsequent participating manufacturer that  
102 as of the effective date of this act already has an agreement with  
103 the settling states (as defined in the Master Settlement  
104 Agreement) with respect to a credit.

105       **SECTION 4.** A nonsettling manufacturer whose cigarettes are  
106 being offered for sale in this state on the effective date of this  
107 act shall provide to the commissioner the information described in  
108 Sections 6 and 7 of this act, and pay the fee imposed by Section 3  
109 of this act within thirty (30) days after the effective date of  
110 this act. If cigarettes of a nonsettling manufacturer are not  
111 being offered for sale in this state on the effective date of this  
112 act, then the nonsettling manufacturer, before its cigarettes may  
113 begin to be offered for sale in this state, shall prepay the fee  
114 imposed by Section 3 of this act for the number of cigarettes of  
115 the nonsettling manufacturer that the commissioner reasonably  
116 projects will be sold in the first calendar month in which  
117 cigarettes of the nonsettling manufacturer are sold in this state.  
118 The prepayment amount shall be determined by multiplying Two and  
119 Three-twentieths Cents (2-3/20¢) times the number of cigarettes  
120 that the commissioner reasonably projects that the nonsettling  
121 manufacturer will sell in this state in that first calendar month,  
122 or Fifty Thousand Dollars (\$50,000.00), whichever is more. The  
123 commissioner may require a nonsettling manufacturer to provide any  
124 information reasonably necessary to determine the fee payment  
125 amount and, in the case of prepayment, shall establish regulations  
126 providing for reimbursement to nonsettling manufacturers if actual  
127 sales are less than sales as projected by the commissioner and for  
128 additional payment by nonsettling manufacturers if actual sales  
129 are greater than sales as projected by the commissioner.

130       **SECTION 5.** Any manufacturer, distributor, or wholesaler of  
131 cigarettes required by Section 27-69-35 to file a monthly report  
132 shall state, in addition to the information required to be

133 reported under Section 27-69-35, the number and denominations of  
134 stamps affixed to individual packages of nonsettling-manufacturer  
135 cigarettes, by manufacturer and brand family, sold for each place  
136 of business in the month preceding the month in which the report  
137 is made, as well as any other information determined by the  
138 commissioner to be necessary or appropriate for determining the  
139 fee due under Section 3 of this act, or for enforcing any of the  
140 provisions of this act. This reporting requirement shall be  
141 enforced in the same manner as the monthly reporting requirement  
142 imposed by Section 27-69-35.

143 **SECTION 6.** Before its cigarettes may begin to be offered for  
144 sale in this state, or, if its cigarettes are being offered for  
145 sale in this state on the effective date of this act, within  
146 thirty (30) days of the effective date of this act, a nonsettling  
147 manufacturer shall provide to the Attorney General, on a form  
148 prescribed by the Attorney General, the following information:

149 (a) The complete name, address and telephone number of  
150 the nonsettling manufacturer;

151 (b) The date that cigarettes of the nonsettling  
152 manufacturer began or will begin to be offered for sale in this  
153 state;

154 (c) The names of the brand families of cigarettes of  
155 the nonsettling manufacturer that are being or will be offered for  
156 sale in this state;

157 (d) A statement of the nonsettling manufacturer's  
158 intention to comply with the obligations imposed by this section;  
159 and

160 (e) The name, address, telephone number and signature  
161 of an officer of the nonsettling manufacturer attesting to all of  
162 the information described in this section.

163 The Attorney General shall make information provided pursuant  
164 to this section available to the commissioner.

165           **SECTION 7.** Each nonsettling manufacturer subject to the fee  
166 imposed by Section 3 of this act shall certify to the Attorney  
167 General on the first day of each month that it is in compliance  
168 with this act and that it has paid in full the fee imposed by  
169 Section 3 of this act. The Attorney General shall develop,  
170 maintain, and publish on its Internet web site a directory listing  
171 all nonsettling manufacturers that have provided current, accurate  
172 and complete certifications. The Attorney General shall provide a  
173 copy of the list to a person upon request.

174           **SECTION 8.** Cigarettes of a nonsettling manufacturer that has  
175 not complied with this act, including payment in full of the fee  
176 imposed by Section 3 of this act, shall be treated as cigarettes  
177 for which the tax assessed by Section 27-69-13 has not been paid,  
178 and a nonsettling manufacturer that has not complied with this act  
179 shall be subject to any and all of the penalties imposed for  
180 violations of Chapter 69, Title 27, Mississippi Code of 1972. A  
181 person shall not affix to any package of nonsettling-manufacturer  
182 cigarettes the stamp required under Sections 27-69-13 and 27-69-27  
183 after receiving notice from the commissioner, which the  
184 commissioner shall provide, that the nonsettling manufacturer of  
185 those cigarettes has not paid in full the fee imposed by Section 3  
186 of this act or if the nonsettling manufacturer does not appear on  
187 the Attorney General's directory described in Section 7 of this  
188 act.

189           **SECTION 9.** (a) A person may not transport or cause to be  
190 transported from this state cigarettes for sale in another state  
191 without first affixing to the cigarettes the stamp required by the  
192 state in which the cigarettes are to be sold or paying any other  
193 excise tax on the cigarettes imposed by the state in which the  
194 cigarettes are to be sold.

195           (b) A person may not affix to cigarettes the stamp  
196 required by another state or pay any other excise tax on the  
197 cigarettes imposed by another state if the other state prohibits

198 stamps from being affixed to the cigarettes, prohibits the payment  
199 of any other excise tax on the cigarettes, or prohibits the sale  
200 of the cigarettes.

201 (c) On or before the fifteenth day of each month, a  
202 person who transports or causes to be transported from this state  
203 cigarettes for sale in another state shall submit to the  
204 commissioner, on forms prescribed by the commissioner, a report  
205 identifying the quantity and brand family of each brand of the  
206 cigarettes transported or caused to be transported in the  
207 preceding calendar month, and the correct name and address of each  
208 recipient of the cigarettes.

209 (d) For purposes of this section, "person" means an  
210 individual, partnership, committee, association, corporation or  
211 any other organization or group of persons. Person does not  
212 include any common or contract carrier, or public warehouse that  
213 is not owned, in whole or in part, directly or indirectly by such  
214 person.

215 **SECTION 10.** (1) (a) There is created in the State Treasury  
216 a special fund to the credit of the University of Mississippi  
217 Medical Center, which shall be comprised of the monies required to  
218 be deposited into the fund under Section 3(2)(a) of this act, and  
219 any other funds that may be made available for the fund by the  
220 Legislature.

221 (b) Monies in the fund shall be expended by the  
222 University of Mississippi Medical Center, upon appropriation by  
223 the Legislature, to aid in the construction, furnishing, equipping  
224 and operating of the University of Mississippi Medical Center  
225 Cancer Institute.

226 (c) Unexpended amounts remaining in the special fund at  
227 the end of a fiscal year shall not lapse into the State General  
228 Fund, and any interest earned or investment earnings on amounts in  
229 the special fund shall be deposited to the credit of the special  
230 fund.

231 (2) (a) There is created in the State Treasury a special  
232 fund to the credit of the State Veterans Affairs Board, which  
233 shall be comprised of the monies required to be deposited into the  
234 fund under Section 3(2)(b) of this act, and any other funds that  
235 may be made available for the fund by the Legislature.

236 (b) Monies in the fund shall be expended by the State  
237 Veterans Affairs Board, upon appropriation by the Legislature, for  
238 operating and maintaining the state veterans homes.

239 (c) Unexpended amounts remaining in the special fund at  
240 the end of a fiscal year shall not lapse into the State General  
241 Fund, and any interest earned or investment earnings on amounts in  
242 the special fund shall be deposited to the credit of the special  
243 fund.

244 (3) (a) There is created in the State Treasury a special  
245 fund, which shall be comprised of the monies required to be  
246 deposited into the fund under Section 3(2)(c) of this act, and any  
247 other funds that may be made available for the fund by the  
248 Legislature.

249 (b) Monies in the fund shall be disbursed, upon  
250 appropriation by the Legislature, equally among the counties in  
251 the State of Mississippi, for distribution to volunteer fire  
252 departments in the counties.

253 (c) Unexpended amounts remaining in the special fund at  
254 the end of a fiscal year shall not lapse into the State General  
255 Fund, and any interest earned or investment earnings on amounts in  
256 the special fund shall be deposited to the credit of the special  
257 fund.

258 **SECTION 11.** Section 27-69-19, Mississippi Code of 1972, is  
259 amended as follows:

260 27-69-19. The provisions of this chapter shall not apply to  
261 dealers in tobacco made the subject of interstate sales, except as  
262 provided in House Bill No. \_\_\_\_\_, 2007 Regular Session.



263           **SECTION 12.** This act shall take effect and be in force from  
264 and after July 1, 2007.