

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 1157

1 AN ACT TO AMEND SECTION 27-69-9, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT MANUFACTURERS AND WHOLESALE DEALERS IN TOBACCO
 3 PRODUCTS SHALL NOT SELL, OFFER TO SELL, OR DELIVER ANY TOBACCO
 4 PRODUCTS TO RETAIL DEALERS IN TOBACCO PRODUCTS AND THAT RETAIL
 5 DEALERS SHALL NOT BUY OR ACCEPT DELIVERY FOR ANY SUCH PRODUCT FOR
 6 ANY CONSIDERATION OTHER THAN CASH OR ON TERMS; TO PROVIDE THAT IF
 7 PAYMENT IS NOT RECEIVED WHEN DUE OR PAYMENT IS RETURNED FOR
 8 INSUFFICIENT FUNDS, THE VENDOR, WITHIN FIVE BUSINESS DAYS, SHALL
 9 NOTIFY THE COMMISSIONER OF REVENUE AND THE COMMISSIONER OF REVENUE
 10 SHALL PROMPTLY NOTIFY ALL MANUFACTURERS AND WHOLESALE DEALERS IN
 11 THE STATE OF THE DEFAULT IN PAYMENT AND THAT NO PERSON SHALL SELL
 12 ANY TOBACCO PRODUCTS TO THE RETAILER IN DEFAULT ON ANY OTHER TERMS
 13 THAN CASH DELIVERY, UNTIL OTHERWISE AUTHORIZED BY THE COMMISSIONER
 14 OF REVENUE; TO AUTHORIZE THE COMMISSIONER OF REVENUE TO SUSPEND OR
 15 REVOKE THE PERMIT OF A RETAIL DEALER FOR NONPAYMENT; TO BRING
 16 FORWARD SECTIONS 27-69-5, 75-23-37 AND 97-32-5, MISSISSIPPI CODE
 17 OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED
 18 PURPOSES.

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

20 **SECTION 1.** Section 27-69-9, Mississippi Code of 1972, is
 21 amended as follows:

22 27-69-9. (1) In addition to the penalties imposed in this
 23 chapter, after the second offense for any violation, the
 24 commissioner may revoke any permit * * * that may have been issued
 25 to any person, or persons, violating any provisions of this



26 chapter, or any rules or regulations promulgated by the
27 commissioner under authority of this chapter.

28 (2) (a) No manufacturer or wholesale dealer shall sell,
29 offer to sell, or deliver any tobacco products to any retail
30 dealer in this state and no retail dealer in tobacco products
31 shall buy or accept delivery for any such product for any
32 consideration other than cash or on terms. If payment is not
33 received when due or payment is returned for insufficient funds,
34 the vendor, within five (5) business days, shall notify the
35 commissioner thereof and the commissioner shall promptly notify
36 all manufacturers and wholesale dealers in the state of the
37 default in payment and thereafter no person shall sell any tobacco
38 products to the retailer in default on any other terms than cash
39 delivery, until otherwise authorized by the commissioner. Under
40 penalty of suspension of the permit, the retailer who is in
41 default shall pay his obligation in full within thirty (30) days
42 from the date it became due.

43 (b) Any permittee that violates the provisions of this
44 section may have his permit suspended for not more than thirty
45 (30) days for each offense. Each failure of a retail dealer to
46 make payment for any default before the expiration period of
47 suspension constitutes a separate offense. The commissioner may
48 permanently revoke the permit of any permittee who is suspended
49 for default in payment for more than six (6) months in any
50 twelve-month period.



51 (c) In addition, the commissioner may require the
52 retail dealer to make payment in cash for all tobacco products
53 subsequently sold or delivered to him.

54 (3) The commissioner, in the event a permit is suspended or
55 revoked, is required to notify all manufacturers, wholesalers and
56 distributors having a permit required by this chapter, that the
57 permit has been suspended or revoked, and such manufacturer,
58 wholesaler and distributor is henceforth prohibited from selling
59 taxable tobacco to such dealer or retailer. The commissioner may
60 notify manufacturers, wholesalers and distributors as required by
61 this paragraph either manually or electronically and shall specify
62 by rule or regulation the method by which the notification shall
63 be made.

64 **SECTION 2.** Section 27-69-5, Mississippi Code of 1972, is
65 brought forward as follows:

66 27-69-5. (1) Every distributor, wholesaler, dealer or
67 retailer who desires to become engaged in the sale or use of
68 tobacco upon which a tax is required to be paid shall file with
69 the commissioner an application for a permit to engage in such
70 business. The application for a permit shall be filed on blanks
71 to be furnished by the commissioner for that purpose. The
72 application must be subscribed and sworn to by the person owning
73 the business, or having an ownership interest in the business. If
74 the applicant is a corporation, a duly authorized agent shall
75 execute the application. The application shall show the name of



76 such person, and in case of partnership, the name of each partner,
77 the person's post-office address, the location of the place of
78 business to which the permit shall apply, and the nature of the
79 business in which engaged, and any other information the
80 commissioner may require. No distributor, wholesaler, dealer or
81 retailer shall sell any tobacco until the application has been
82 filed, the prescribed permit fee paid, and the permit obtained.
83 Except as otherwise provided in this subsection, the permit shall
84 expire on January 31 of each year. However, a retail permit shall
85 continue in force during the time that the permit holder to whom
86 it is issued continues in the same business at the same location
87 unless such permit is revoked by the commissioner for cause or is
88 revoked pursuant to any provision of Section 27-70-1 et seq.,
89 Section 75-23-1 et seq. or the Mississippi Juvenile Tobacco Access
90 Prevention Act in Sections 97-32-1 through 97-32-23.

91 (2) An application shall be filed, and a permit obtained for
92 each place of business owned or operated by each distributor,
93 wholesaler, dealer or retailer.

94 (3) Upon receipt of the application and any permit fee
95 provided for in this chapter, the commissioner may issue to every
96 distributor, wholesaler, dealer or retailer, for the place of
97 business designated, a nonassignable permit, authorizing the sale
98 or use of tobacco in the state. The permit shall provide that it
99 is revocable, and may be forfeited or suspended upon violation of
100 any provision of this chapter, the Mississippi Tobacco Youth



101 Access Prevention Act of 1997, Section 27-70-7 et seq., Section
102 75-23-1 et seq. or any rule or regulation adopted by the
103 commissioner. If the permit is revoked or suspended, the
104 distributor, wholesaler, dealer or retailer shall not sell any
105 tobacco from the place of business until a new permit is granted,
106 or the suspension of the old permit removed.

107 (4) A permit cannot be transferred from one person to
108 another, and the permit shall at all times be publicly displayed
109 by the distributor, wholesaler, dealer or retailer in his place of
110 business so as to be seen easily by the public. A permit may be
111 refused to any person previously convicted of violations of this
112 chapter or Section 27-70-1 et seq.

113 (5) Information contained on a permit may be disclosed to
114 the holder of a wholesaler's permit, to law enforcement agencies
115 of the federal government, state or any political subdivision of
116 the state, and to the Attorney General and federal agencies
117 responsible for administering tobacco laws.

118 **SECTION 3.** Section 75-23-37, Mississippi Code of 1972, is
119 brought forward as follows:

120 75-23-37. (1) Upon finding a violation of this article or a
121 regulation promulgated pursuant to this article, the commission
122 may revoke or suspend the license or licenses of any permittee
123 pursuant to the procedures set forth in Section 27-69-9 and may
124 also impose on the permittee a civil penalty in an amount not to
125 exceed the greater of five hundred percent (500%) of the retail



126 value of the cigarettes involved or Five Thousand Dollars
127 (\$5,000.00).

128 (2) Cigarettes that are acquired, held, owned, possessed,
129 transported in, imported into, or sold or distributed in this
130 state in violation of this article shall be deemed contraband
131 under Sections 27-69-53 through 27-69-57 and shall be subject to
132 seizure and forfeiture as provided therein. Such cigarettes so
133 seized and forfeited shall be destroyed. Such cigarettes shall be
134 deemed contraband whether the violation of this article is knowing
135 or otherwise.

136 **SECTION 4.** Section 97-32-5, Mississippi Code of 1972, is
137 brought forward as follows:

138 97-32-5. It shall be unlawful for any person, or retailer,
139 to sell, barter, deliver or give tobacco products to any
140 individual under eighteen (18) years of age unless the individual
141 under eighteen (18) years of age holds a retailer's license to
142 sell tobacco under Section 27-69-1 et seq., Mississippi Code of
143 1972.

144 It shall be an absolute affirmative defense that the person
145 selling, bartering, delivering or giving tobacco products over the
146 counter in a retail establishment to an individual under eighteen
147 (18) years of age in violation of this article had requested and
148 examined a government-issued photographic identification from such
149 person establishing his age as at least eighteen (18) years prior
150 to selling such person a tobacco product. The failure of a



151 seller, barterer, deliverer or giver of tobacco products over the
152 counter in a retail establishment to request and examine
153 photographic identification from a person under eighteen (18)
154 years of age prior to the sale of a tobacco product to such person
155 if the individual is not known to the seller, barterer, deliverer
156 or giver of the tobacco product to be over the age of eighteen
157 (18) years, shall be construed against the seller, barterer,
158 deliverer or giver and form a conclusive basis for the seller's
159 violation of this section.

160 It shall be an absolute affirmative defense that the person
161 or entity giving tobacco products through the mail to an
162 individual under eighteen (18) years of age in violation of this
163 article had requested and received documentary or written evidence
164 from such person purportedly establishing his age to be at least
165 eighteen (18) years of age.

166 Any person who violates this section shall be liable as
167 follows: For a first conviction, a fine of Fifty Dollars
168 (\$50.00); for a second conviction, a fine of Seventy-five Dollars
169 (\$75.00); and for all subsequent convictions, a fine of One
170 Hundred Fifty Dollars (\$150.00) shall be imposed.

171 Any person found in violation of this section shall be issued
172 a citation and the holder of the retailer permit shall be sent
173 notification of this citation by registered mail by the law
174 enforcement agency issuing the citation. Notification shall
175 include the opportunity for hearing before the appropriate court.



176 For a first conviction, the retailer shall be sent a warning
177 letter informing him of the retailer's responsibility in the
178 selling of tobacco products. For a second conviction, the
179 retailer, or retailer's designee, shall be required to enroll in
180 and complete a "Retailer Tobacco Education Program."

181 For a third or subsequent violation of this section by any
182 retailer, within one (1) year of the two (2) prior violations, any
183 retailer's permit issued pursuant to Section 27-69-1 et seq.,
184 Mississippi Code of 1972, may be revoked or suspended for a period
185 of at least one (1) year after notice and opportunity for hearing.
186 If said permit is revoked by the Tax Commission, the retailer may
187 not reapply for a permit to sell tobacco for a period of six (6)
188 months. For the purposes of this section, "subsequent violations"
189 are those committed at the same place of business.

190 It is the responsibility of all law enforcement officers and
191 law enforcement agencies of this state to ensure that the
192 provisions of this article are enforced.

193 It shall not be considered a violation of this section on the
194 part of any law enforcement officer or person under eighteen (18)
195 years of age for any law enforcement officer of this state to use
196 persons under eighteen (18) years of age to purchase or attempt to
197 purchase tobacco products for the purpose of monitoring compliance
198 with this section, as long as those persons are supervised by duly
199 authorized law enforcement agency officials.



200 Any law enforcement agency conducting enforcement efforts
201 undertaken pursuant to this article shall prepare a report as
202 prescribed by the Attorney General which includes the number of
203 unannounced inspections conducted by the agency, a summary of
204 enforcement actions taken pursuant to this article, the name and
205 permit number of the retailer pursuant to Section 27-69-1 et seq.,
206 Mississippi Code of 1972, and final judicial disposition on all
207 enforcement actions. Reports shall be forwarded to the Office of
208 the Attorney General within twenty (20) working days of the final
209 judicial disposition.

210 On notification from local law enforcement that a retailer
211 has violated this article so as to warrant a revocation of the
212 retailer's permit, the Attorney General shall notify in writing
213 the State Tax Commission within twenty (20) working days.

214 In accordance with the procedures of Section 27-69-9,
215 Mississippi Code of 1972, the State Tax Commission shall initiate
216 revocation procedures of the retailer's permit. The Office of the
217 Attorney General shall provide legal assistance in revocation
218 procedures when requested by the Tax Commission.

219 **SECTION 5.** This act shall take effect and be in force from
220 and after July 1, 2018.

