

By: Senator(s) Sparks, Harkins, Boyd,
Younger, Rhodes, England

To: Finance

SENATE BILL NO. 3105

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
2 DEFINE "HEATED TOBACCO PRODUCT" AND REVISE THE DEFINITION OF
3 "TOBACCO" TO INCLUDE HEATED TOBACCO PRODUCTS; TO AMEND SECTION
4 27-69-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THE EXCISE TAX RATE
5 FOR HEATED TOBACCO PRODUCTS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 27-69-3, Mississippi Code of 1972, is
8 amended as follows:

9 27-69-3. When used in this chapter:

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

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

16 (c) "Commissioner" means the Commissioner of Revenue of
17 the Department of Revenue, and his authorized agents and
18 employees.



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

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

27 (f) "Tobacco" means any cigarettes, cigars, cheroots,
28 stogies, heated tobacco products, smoking tobacco (including
29 granulated, plug cut, crimp cut, ready rubbed, and other kinds and
30 forms of tobacco, or substitutes therefor, prepared in such manner
31 as to be suitable for smoking in a pipe or cigarette) and
32 including plug and twist chewing tobacco and snuff, when such
33 "tobacco" is manufactured and prepared for sale or personal
34 consumption. All words used herein shall be given the meaning as
35 defined in the regulations of the Treasury Department of the
36 United States of America, unless otherwise defined in this
37 section.

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

41 (h) "Drop shipment" means and includes any delivery of
42 tobacco received by any person within this state, when payment for



43 such tobacco is made to the shipper, or seller by or through a
44 person other than a consignee.

45 (i) "Distributor" includes every person, except
46 retailers as defined herein, in the state who manufactures or
47 produces tobacco or who ships, transports, or imports into this
48 state, or in any manner acquires or possesses tobacco, and makes a
49 first sale of the same in the state.

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

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

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



67 The word "dealer" is further defined to mean any person,
68 firm, corporation or association of persons, except retailers as
69 defined herein, who imports tobacco from any state or foreign
70 country for distribution, sale, use, or consumption in the State
71 of Mississippi.

72 (m) "Distributing agent" includes every person in the
73 state who acts as an agent of any person outside the State of
74 Mississippi, by receiving tobacco in interstate commerce, and
75 storing such tobacco in this state subject to distribution, or
76 delivery upon order from the person outside the state to
77 distributors, wholesalers, retailers and dealers.

78 (n) "Transient vendor" means and includes every person
79 commonly and generally termed "peddlers" and every person acting
80 for himself, or as an agent, employee, salesman, or in any
81 capacity for another, whether as owner, bailee, or other custodian
82 of tobacco, and going from person to person, dealer to dealer,
83 house to house, or place to place, and selling or offering for
84 sale at retail or wholesale tobacco, and every person who does not
85 keep a regular place of business open at all times in regular
86 hours, and every person who goes from person to person, dealer to
87 dealer, house to house, or place to place, and sells or offers for
88 sale tobacco which he carries with him, and who delivers the same
89 at the time of, or immediately after the sale, or without
90 returning to the place of business operations (a permanent place



91 of business within the state) between the taking of the order and
92 the delivery of the tobacco, or

93 All persons who go from person to person, house to house,
94 place to place, or dealer to dealer, soliciting orders by
95 exhibiting samples, or taking orders, and thereafter making
96 delivery of tobacco, or filling the order without carrying or
97 sending the order to the permanent place of business, and
98 thereafter making delivery of the tobacco pursuant to the terms of
99 the order, or

100 All persons who go from person to person, place to place,
101 house to house, or dealer to dealer, carrying samples and selling
102 tobacco from samples, and afterwards making delivery without
103 taking and sending an order therefor to a permanent place of
104 business for the filling of the order, and delivery of the
105 tobacco, or the exchange of tobacco having become damaged or
106 unsalable, or the purchase by tobacco of advertising space, or

107 All persons who have in their possession, or under their
108 control, any tobacco offered, or to be offered for sale or to be
109 delivered, unless the sale or delivery thereof is to be made in
110 pursuance of a bona fide order for the tobacco, to be sold or
111 delivered, the order to be evidenced by an invoice or memorandum.

112 (o) "Contraband tobacco" means all tobacco found in the
113 possession of any person whose permit to engage in dealing in
114 tobacco has been revoked by the commissioner; and any cigarettes
115 found in the possession of any person to which the proper tax



116 stamps have not been affixed; and any cigarettes improperly
117 stamped when found in the possession of any person; and all other
118 tobacco upon which the excise tax has not been paid.

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

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

124 (r) "Stamp" or "stamping," or the import of such word,
125 when used in this chapter, means any manner of stamp or impression
126 permitted by the commissioner that carries out the purposes of the
127 chapter in clearly indicating upon the packages of cigarettes
128 taxed the due payment of the tax and clearly identifying, by
129 serial number or otherwise, the permittee who affixed the stamp to
130 the particular package.

131 (s) "Manufacturer's list price" means the full sales
132 price at which tobacco is sold or offered for sale by a
133 manufacturer to the wholesaler or distributor in this state
134 without any deduction for freight, trade discount, cash discounts,
135 special discounts or deals, cash rebates, or any other reduction
136 from the regular selling price. In the event freight charges on
137 shipments to wholesalers or distributors are not paid by the
138 manufacturer, then such freight charges required to be paid by the
139 wholesalers and distributors shall be added to the amount paid to
140 the manufacturer in order to determine "manufacturer's list



141 price." In the case of a wholesaler or distributor whose place of
142 business is located outside this state, the "manufacturer's list
143 price" for tobacco sold in this state by such wholesaler or
144 distributor shall in all cases be considered to be the same as
145 that of a wholesaler or distributor located within this state.

146 (t) "Heated tobacco product" means a product containing
147 tobacco and producing an inhalable aerosol by use of an electronic
148 device that either heats the tobacco without burning it, or
149 primarily heats rather than burns the tobacco. The term "heated
150 tobacco product" does not include cigarettes.

151 **SECTION 2.** Section 27-69-13, Mississippi Code of 1972, is
152 amended as follows:

153 27-69-13. (1) There is hereby imposed, levied and assessed,
154 to be collected and paid as hereinafter provided in this chapter,
155 an excise tax on each person or dealer in cigarettes, cigars,
156 stogies, snuff, chewing tobacco, heated tobacco products and
157 smoking tobacco, or substitutes therefor, upon the sale, use,
158 consumption, handling or distribution in the State of Mississippi,
159 as follows:

160 (a) On cigarettes, the rate of tax shall be Three and
161 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
162 length of one hundred twenty (120) millimeters; any cigarette in
163 excess of this length shall be taxed as if it were two (2) or more
164 cigarettes. Provided, however, if the federal tax rate on
165 cigarettes in effect on June 1, 1985, is reduced, then the rate as



166 provided herein shall be increased by the amount of the federal
167 tax reduction. Such tax increase shall take effect on the first
168 day of the month following the effective date of such reduction in
169 the federal tax rate.

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

174 (c) On heated tobacco products, the rate of tax shall
175 be Seventeen Hundredths Cent (0.17¢) per heat stick, defined as a
176 single-use unit sold for consumption, or Three and Four Tenths
177 Cents (3.4¢) per pack of twenty (20) heat sticks.

178 (2) No stamp evidencing the tax herein levied on cigarettes
179 shall be of a denomination of less than One Cent (1¢), and
180 whenever the tax computed at the rates herein prescribed on
181 cigarettes shall be a specified amount, plus a fractional part of
182 One Cent (1¢), the package shall be stamped for the next full
183 cent; however, the additional face value of stamps purchased to
184 comply with taxes imposed by this section after June 1, 1985,
185 shall be subject to a four percent (4%) discount or compensation
186 to dealers for their services rather than the eight percent (8%)
187 discount or compensation allowed by Section 27-69-31.

188 Every wholesaler shall purchase stamps as provided in this
189 chapter, and affix the same to all packages of cigarettes handled
190 by him as herein provided.



191 (3) The above tax is levied upon the sale, use, gift,
192 possession or consumption of tobacco within the State of
193 Mississippi, and the impact of the tax levied by this chapter is
194 hereby declared to be on the vendee, user, consumer or possessor
195 of tobacco in this state; and when said tax is paid by any other
196 person, such payment shall be considered as an advance payment and
197 shall thereafter be added to the price of the tobacco and
198 recovered from the ultimate consumer or user.

199 **SECTION 3.** This act shall take effect and be in force from
200 and after its passage.

