

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

To: Finance

SENATE BILL NO. 3105
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERM "HEATED TOBACCO PRODUCT" UNDER THE TOBACCO TAX
3 LAW; TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972, TO LEVY
4 AN EXCISE TAX ON HEATED TOBACCO PRODUCTS UNDER THE TOBACCO TAX
5 LAW; TO AMEND SECTION 27-69-27, MISSISSIPPI CODE OF 1972, IN
6 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

10 27-69-3. When used in this chapter:

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

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

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



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

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

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

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 products" means a product
147 containing tobacco that produces an inhalable aerosol by (i)
148 heating the tobacco without combustion of the tobacco or (ii) heat
149 generated from a combustion source that only or primarily heats
150 rather than burns the tobacco.

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

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

159 (a) On cigarettes, the rate of tax shall be Three and
160 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
161 length of one hundred twenty (120) millimeters; any cigarette in
162 excess of this length shall be taxed as if it were two (2) or more
163 cigarettes. Provided, however, if the federal tax rate on
164 cigarettes in effect on June 1, 1985, is reduced, then the rate as
165 provided herein shall be increased by the amount of the federal
166 tax reduction. Such tax increase shall take effect on the first
167 day of the month following the effective date of such reduction in
168 the federal tax rate. Heated tobacco products shall not be taxed



169 as cigarettes under this paragraph (a); however, this exclusion
170 shall not affect heated tobacco products for any purposes related
171 to Section 27-70-1 et seq.

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

176 (c) On heated tobacco products, the rate of tax shall
177 be one and twenty-five one-hundredths cents (1.25¢) on each
178 disposable heated tobacco unit or stick sold to be used for
179 consumption by insertion into a heated tobacco product heating
180 system device.

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

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



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

202 **SECTION 3.** Section 27-69-27, Mississippi Code of 1972, is
203 amended as follows:

204 27-69-27. The payment of the tax imposed by this chapter
205 shall be evidenced by affixing stamps to each individual package
206 of cigarettes usually sold to consumers, as distinguished from
207 cartons or larger units which are composed of a number of
208 individual packages.

209 Except as otherwise provided in this paragraph, the stamp
210 shall be affixed within seventy-two (72) hours after the receipt
211 of the cigarettes by the wholesaler, and within forty-eight (48)
212 hours after receipt of the cigarettes by the retailer; provided,
213 that in the case a dealer conducts a wholesale and retail business
214 at one (1) place of business, stamps shall be affixed within
215 forty-eight (48) hours after receipt of the cigarettes. However,
216 the provisions of this paragraph shall not apply to tobacco at the
217 point it is purchased at a sale under Section 27-69-56. The stamp
218 must be so securely affixed as to require the continued



219 application of water or of steam to remove it, or so that it
220 cannot be otherwise removed without destruction or mutilation.

221 The excise tax imposed on cigars, smoking tobacco, chewing
222 tobacco, snuff and all other tobacco products except cigarettes
223 and heated tobacco products shall be computed by the application
224 of the excise tax rate to the manufacturer's list price on all
225 purchases of such tobacco. The excise tax shall be due and
226 payable on or before the fifteenth day of the month next
227 succeeding the month in which the tax accrues. The tax shall be
228 filed with the commissioner on forms prescribed by the
229 commissioner.

230 Provided, however, manufacturers or other wholesale
231 distributors of tobacco, which are subject to the excise taxes
232 imposed by Section 27-69-13 of this chapter for the privilege of
233 selling or using such tobaccos within this state, who maintain
234 "terminals" or warehouses in which such tobaccos are stored, and
235 who sell only to licensed wholesale dealers within the state who
236 are qualified to purchase and affix the stamps required, may
237 maintain such "spot stocks," intended only for such sales, without
238 affixing the stamps or filing returns and paying the tax.

239 Any person desiring to maintain such "terminal" or warehouse,
240 shall make application to the commissioner and obtain a permit to
241 maintain such stocks without affixing stamps thereto, for sale
242 exclusively to out-of-state purchasers, or licensed wholesale
243 dealers within this state, and the commissioner is hereby



244 authorized to grant such permit upon the execution and filing with
245 the commissioner, by the applicant, a bond with surety companies,
246 authorized to do business in Mississippi, as surety thereon, and
247 conditioned for the strict compliance by the applicant, with the
248 following conditions under which said privilege may be granted.

249 The person maintaining such stock of untaxed tobacco shall
250 supply to the commissioner monthly, or at such times as the
251 commissioner may require, complete invoices of all tobaccos
252 received, and shall also supply correct invoices of all tobaccos
253 removed from such "terminal" or warehouse, said invoices to
254 contain the correct name and address of all persons to whom such
255 tobacco shall be delivered or consigned, whether within or without
256 the State of Mississippi.

257 The penalty of such bond shall be determined by the
258 commissioner, in an amount sufficient to protect the State of
259 Mississippi from any loss of revenue which might occur by reason
260 of the failure of principal to strictly adhere to the requirement
261 that no tobacco would be sold from such stock within the State of
262 Mississippi, except to licensed wholesale dealers.

263 **SECTION 4.** Nothing in this act shall affect or defeat any
264 claim, assessment, appeal, suit, right or cause of action for
265 taxes due or accrued under the tobacco tax laws before the date on
266 which this act becomes effective, whether such claims,
267 assessments, appeals, suits or actions have been begun before the
268 date on which this act becomes effective or are begun thereafter;



269 and the provisions of the tobacco tax laws are expressly continued
270 in full force, effect and operation for the purpose of the
271 assessment, collection and enrollment of liens for any taxes due
272 or accrued and the execution of any warrant under such laws before
273 the date on which this act becomes effective, and for the
274 imposition of any penalties, forfeitures or claims for failure to
275 comply with such laws.

276 **SECTION 5.** This act shall take effect and be in force from
277 and after July 1, 2024.

