

By: Representative Currie

To: Ways and Means

HOUSE BILL NO. 1652

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "TOBACCO" UNDER THE TOBACCO TAX
3 LAW; TO DEFINE THE TERM "VAPOR PRODUCT" UNDER THE TOBACCO TAX LAW;
4 TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972, TO LEVY AN
5 EXCISE TAX ON VAPOR PRODUCTS; TO AMEND SECTIONS 27-69-15,
6 27-69-27, 27-69-33 AND 27-69-35, MISSISSIPPI CODE OF 1972, IN
7 CONFORMITY THERETO; TO BRING FORWARD SECTION 27-69-69, MISSISSIPPI
8 CODE OF 1972, WHICH IS A SECTION OF THE TOBACCO TAX LAW, FOR THE
9 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

13 27-69-3. When used in this chapter:

14 (a) "State" means the State of Mississippi as
15 geographically defined, and any and all waters under the
16 jurisdiction of the State of Mississippi.

17 (b) "State Auditor" means the Auditor of Public
18 Accounts of the State of Mississippi, or his legally appointed
19 deputy, clerk or agent.



20 (c) "Commissioner" means the Commissioner of Revenue of
21 the Department of Revenue, and his authorized agents and
22 employees.

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

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

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

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



45 (h) "Drop shipment" means and includes any delivery of
46 tobacco received by any person within this state, when payment for
47 such tobacco is made to the shipper, or seller by or through a
48 person other than a consignee.

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

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

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

67 (l) "Dealer" includes every person, firm, corporation
68 or association of persons, except retailers as defined herein, who



69 manufacture tobacco for distribution, for sale, for use or for
70 consumption in the State of Mississippi.

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

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

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



94 returning to the place of business operations (a permanent place
95 of business within the state) between the taking of the order and
96 the delivery of the tobacco, or

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

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

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

116 (o) "Contraband tobacco" means all tobacco found in the
117 possession of any person whose permit to engage in dealing in
118 tobacco has been revoked by the commissioner; and any cigarettes



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

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

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

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

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



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

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

(u) "Vapor product" means an electronic product or device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the product or device, including, but not limited to, an e-cigar, e-cigarillo, e-pipe, vape pen or e-hookah; and includes any cartridge, component, part or accessory of the electronic product or device, whether or not sold separately, and also includes any liquid, capsule, powder or substance intended to be aerosolized, vaporized or otherwise ingested during the use of the electronic product or device, whether or not the substance contains nicotine. The term "vapor product" does not include (i) a product that is a drug under 21 USCS 321(g)(1); (ii) a product that is a device under 21 USCS 321(h); or (iii) a combination product described in 21 USCS 353(g).



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

171 27-69-13. There is hereby imposed, levied and assessed, to
172 be collected and paid as hereinafter provided in this chapter, an
173 excise tax on each person or dealer in cigarettes, cigars,
174 stogies, snuff, chewing tobacco * * * and smoking tobacco, vapor
175 products, or substitutes therefor, upon the sale, use,
176 consumption, handling or distribution in the State of Mississippi,
177 as follows:

178 (a) On cigarettes, the rate of tax shall be Three and
179 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
180 length of one hundred twenty (120) millimeters; any cigarette in
181 excess of this length shall be taxed as if it were two (2) or more
182 cigarettes. Provided, however, if the federal tax rate on
183 cigarettes in effect on June 1, 1985, is reduced, then the rate as
184 provided herein shall be increased by the amount of the federal
185 tax reduction. Such tax increase shall take effect on the first
186 day of the month following the effective date of such reduction in
187 the federal tax rate. Heated tobacco products shall not be taxed
188 as cigarettes under this paragraph (a); however, this exclusion
189 shall not affect heated tobacco products for any purposes related
190 to Section 27-70-1 et seq.

191 (b) On cigars, cheroots, stogies, snuff, chewing and
192 smoking tobacco, vapor products and all other tobacco products



except cigarettes and heated tobacco products, the rate of tax shall be fifteen percent (15%) of the manufacturer's list price.

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

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

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

The above tax is levied upon the sale, use, gift, possession or consumption of tobacco within the State of Mississippi, and the impact of the tax levied by this chapter is hereby declared to be on the vendee, user, consumer or possessor of tobacco in this state; and when said tax is paid by any other person, such payment



shall be considered as an advance payment and shall thereafter be added to the price of the tobacco and recovered from the ultimate consumer or user.

SECTION 3. Section 27-69-15, Mississippi Code of 1972, is amended as follows:

27-69-15. Any retailer, transient vendor, distributing agent, salesman, or other dealer who shall receive any cigarettes other than from a wholesaler having a permit as herein provided, and not having the necessary stamps already affixed, shall, after the receipt of such cigarettes, within the time limit herein provided, present the same to some wholesaler having such permit, for the affixing of the stamps required, and it shall be the duty of such wholesaler, thereupon and upon the payment to him by such retailer of the face value of the stamps required, to affix the stamps to said cigarettes in the same manner as if the cigarettes were handled and sold by such wholesaler, provided, that such wholesaler, before affixing the stamps, shall require of the retailer, transient vendor, distributing agent, salesman, or other dealer, the original invoice for the cigarettes to be stamped, and such wholesaler shall in each instance note upon the invoice, the denominations and number of stamps affixed to the cigarettes covered by said invoice, the notation to be made in ink, or other manner not easy to erase, at the time the stamps are affixed.

It is further provided that, in addition hereto, the wholesaler shall keep a separate record of all stamps affixed to



243 taxable cigarettes presented by retailers, transient vendors,
244 distributing agents, salesmen, or other dealers, showing the name
245 of the retailer, transient vendor, distributing agent, salesman,
246 or other dealer, name of the shipper, date of shipper's invoice,
247 the date stamps were affixed, denomination of stamps affixed, and
248 total value of stamps affixed.

249 When the request is made to any wholesaler in this state by a
250 retailer, transient vendor, distributing agent, salesman, or other
251 dealer in this state, said request being duly and seasonably made
252 for the affixing of stamps, and the request is accompanied by
253 proper remittance and invoice, and such wholesaler refuses to
254 affix the stamps to cigarettes as requested, said wholesaler shall
255 forfeit to the state a penalty of Twenty-five Dollars (\$25.00) for
256 each offense, the same to be collected by the commissioner and, in
257 addition thereto, in the discretion of the commissioner, forfeit
258 his permit to handle stamps. In the event of such refusal on the
259 part of any wholesaler to affix stamps said retailer, transient
260 vendor, distributing agent, salesman, or other dealer may make
261 application to the commissioner for stamps to be placed on the
262 cigarettes upon which the wholesaler refused to affix the stamps,
263 said application to be accompanied by an affidavit from the
264 retailer, transient vendor, distributing agent, salesman, or other
265 dealer, or some other credible person, setting forth the facts,
266 whereupon the commissioner may issue and sell to such retailer,



transient vendor, distributing agent, salesman, or other dealer, a sufficient number of stamps to be affixed to the cigarettes.

Stamps shall not be affixed to any cigarettes except by a wholesale dealer having a permit, except as otherwise provided in this chapter.

Stamps shall not be required to be affixed to any cigarettes while the same is in interstate commerce.

Any person who receives cigars, smoking tobacco, chewing tobacco, snuff, vapor products or any other tobacco products except cigarettes from anyone other than a wholesaler having a tobacco permit issued by this state and the excise tax on the tobacco received has not been paid, shall compute the excise tax due the State of Mississippi at the rate prescribed herein on forms furnished by the commissioner for that purpose. Such report shall be accompanied by the remittance for the tax due and shall be filed with the commissioner within forty-eight (48) hours after receipt of the tobacco by such person.

In no case shall the provisions of this chapter be construed to require the payment of a tax upon any tobacco upon which the tax herein levied has once been paid to the state.

SECTION 4. Section 27-69-27, Mississippi Code of 1972, is amended as follows:

27-69-27. The payment of the tax imposed by this chapter shall be evidenced by affixing stamps to each individual package of cigarettes usually sold to consumers, as distinguished from



292 cartons or larger units which are composed of a number of
293 individual packages.

294 Except as otherwise provided in this paragraph, the stamp
295 shall be affixed within seventy-two (72) hours after the receipt
296 of the cigarettes by the wholesaler, and within forty-eight (48)
297 hours after receipt of the cigarettes by the retailer; provided,
298 that in the case a dealer conducts a wholesale and retail business
299 at one (1) place of business, stamps shall be affixed within
300 forty-eight (48) hours after receipt of the cigarettes. However,
301 the provisions of this paragraph shall not apply to tobacco at the
302 point it is purchased at a sale under Section 27-69-56. The stamp
303 must be so securely affixed as to require the continued
304 application of water or of steam to remove it, or so that it
305 cannot be otherwise removed without destruction or mutilation.

306 The excise tax imposed on cigars, smoking tobacco, chewing
307 tobacco, snuff, vapor products and all other tobacco products
308 except cigarettes and heated tobacco products shall be computed by
309 the application of the excise tax rate to the manufacturer's list
310 price on all purchases of such tobacco. The excise tax shall be
311 due and payable on or before the fifteenth day of the month next
312 succeeding the month in which the tax accrues. The tax shall be
313 filed with the commissioner on forms prescribed by the
314 commissioner.

315 Provided, however, manufacturers or other wholesale
316 distributors of tobacco, which are subject to the excise taxes



317 imposed by Section 27-69-13 of this chapter for the privilege of
318 selling or using such tobaccos within this state, who maintain
319 "terminals" or warehouses in which such tobaccos are stored, and
320 who sell only to licensed wholesale dealers within the state who
321 are qualified to purchase and affix the stamps required, may
322 maintain such "spot stocks," intended only for such sales, without
323 affixing the stamps or filing returns and paying the tax.

324 Any person desiring to maintain such "terminal" or warehouse,
325 shall make application to the commissioner and obtain a permit to
326 maintain such stocks without affixing stamps thereto, for sale
327 exclusively to out-of-state purchasers, or licensed wholesale
328 dealers within this state, and the commissioner is hereby
329 authorized to grant such permit upon the execution and filing with
330 the commissioner, by the applicant, a bond with surety companies,
331 authorized to do business in Mississippi, as surety thereon, and
332 conditioned for the strict compliance by the applicant, with the
333 following conditions under which said privilege may be granted.

334 The person maintaining such stock of untaxed tobacco shall
335 supply to the commissioner monthly, or at such times as the
336 commissioner may require, complete invoices of all tobaccos
337 received, and shall also supply correct invoices of all tobaccos
338 removed from such "terminal" or warehouse, said invoices to
339 contain the correct name and address of all persons to whom such
340 tobacco shall be delivered or consigned, whether within or without
341 the State of Mississippi.



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

SECTION 5. Section 27-69-33, Mississippi Code of 1972, is amended as follows:

27-69-33. Manufacturers, distributors and wholesalers of cigars, cigarettes * * *, smoking tobacco or vapor products subject to the tax under this chapter, doing both intrastate and interstate business in such tobacco, must qualify as interstate dealers in such tobacco by applying to the commissioner for permission to engage in such business, and, upon receipt of such permission, he shall be permitted to set aside such part of his stock as may be absolutely necessary for the conduct of such interstate business, without affixing the stamps to cigarettes required by this chapter. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from intrastate stock, and the said interstate business shall be conducted by the said wholesale dealer in accordance with rules and regulations to be promulgated by the commissioner.

It is further provided that shipment of such merchandise be made only by a railroad, express company, boat line, or motor freight line certified by the Mississippi Public Service



Commission as a common carrier, or by registered or insured parcel post.

It is further provided that any manufacturer, distributor, or wholesaler of cigars, cigarettes * * *, smoking tobacco or vapor products, engaged in interstate commerce in such tobaccos, shall report to the commissioner on or before the fifteenth day of each month, on forms prescribed by the commissioner, all sales of cigarettes made in interstate commerce during the preceding month to which Mississippi stamps were not affixed. These reports must be made supplementary to the reports required to be filed by Section 27-69-35 of this chapter.

Each shipment must be covered by a complete copy of invoice of the consignor, and supported by properly receipted bill of lading of the transportation company, or post office department as specified in the foregoing, and the receipted bills of lading and invoices shall be subject to inspection by the commissioner for a period of three (3) years.

The commissioner is further authorized to verify the actual delivery to the consignee of such unstamped taxable cigarettes before allowing credit, and for the purpose of such verification, the commissioner may exchange information with the proper authorities of other states as to movement of taxable tobacco to and from other states into and from the State of Mississippi.

SECTION 6. Section 27-69-35, Mississippi Code of 1972, is amended as follows:



392 27-69-35. It shall be the duty of every person subject to
393 the provisions of this chapter, to keep an accurate set of
394 records, showing all transactions had with reference to the
395 purchase, sale or gift of cigars, cigarettes, * * *, smoking
396 tobacco or vapor products, and such person shall keep separately
397 all invoices of cigars, cigarettes * * *, smoking tobacco or vapor
398 products, and shall keep a record of all stamps purchased, and
399 such records, and all stocks of cigars, cigarettes * * *, smoking
400 tobacco or vapor products on hand, shall be open to inspection at
401 all reasonable times to the commissioner; provided, however, that
402 all retail dealers, transient vendors, distributing agents, or
403 other dealers purchasing, or receiving cigars, cigarettes, * * *,
404 smoking tobacco or vapor products from without the state, whether
405 the same shall have been ordered through a wholesaler, or jobber
406 in this state, or by drop shipment, or otherwise, shall within
407 five (5) days after receipt of the same, mail a duplicate invoice
408 of all such purchases, or receipts, to the commissioner, and
409 failure to furnish such duplicate invoices shall be deemed a
410 misdemeanor.

411 It is further provided that all manufacturers, distributors
412 and wholesalers of cigars, cigarettes * * *, smoking tobacco or
413 vapor products, who have a permit required by this chapter shall
414 furnish the commissioner with a statement monthly, showing the
415 amount of taxable tobacco received, and must also furnish the



commissioner with duplicate invoices covering stamps affixed to drop shipments purchased by retailers.

In the examination of such books, records, etc., the commissioner shall have the power to administer oaths to any person, and any person answering falsely, under oath, any of such questions, shall be guilty of perjury.

If any person being so examined, fails to answer questions propounded to him by the commissioner, or if any person, being summoned to appear and answer such questions, shall fail or refuse to do so, or if any person shall fail or refuse to permit the inspection of his stock of merchandise, or invoices, or books, or papers pertaining to any dealers in cigars, cigarettes * * *,
smoking tobacco or vapor products, the commissioner may make such fact known to the circuit court of the county in which such failure or refusal occurs, or judge thereof in termtime or in vacation, by petition, and such circuit court, or judge thereof, shall issue a summons for such person so refusing, returnable on a date to be fixed by said court, or said judge, and on said date, the said circuit court, or the circuit judge, shall proceed to examine into the truth of the matter set out in said petition, and if the same be found to be true, the said circuit court, or circuit judge, shall issue a writ of subpoena duces tecum ordering and directing the person so summoned to bring into court, and exhibit for the inspection of the commissioner, all such books, records, invoices, etc., as the court may deem proper from all the



441 facts and circumstances in the case. Any person failing or
442 refusing to present such books, records, invoices, etc., or
443 failing or refusing to testify, shall be punished for contempt as
444 provided by Section 9-1-17 of the Mississippi Code of 1972.

445 **SECTION 7.** Section 27-69-69, Mississippi Code of 1972, is
446 brought forward as follows:

447 27-69-69. Any municipality within this state, in which any
448 business licensed under the provisions of this chapter, may be
449 carried on, shall have the right to impose upon persons engaged in
450 such business, an annual privilege tax of not more than fifty
451 percent (50%) of the permit fee imposed by Section 27-69-7 of this
452 chapter; provided, however, that no person engaged in the
453 wholesale sale, or distribution of cigars, cigarettes or smoking
454 tobacco taxed by this chapter shall be taxed by any municipality
455 other than that in which the warehouse or wholesale business is
456 located.

457 **SECTION 8.** This act shall take effect and be in force from
458 and after July 1, 2025.

