

By: Senator(s) Hopson

To: Finance

## SENATE BILL NO. 3124

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO  
2 DEFINE THE TERM "ELECTRONIC NICOTINE DELIVERY SYSTEMS" OR "ENDS  
3 PRODUCTS" UNDER THE TOBACCO TAX LAW; TO AMEND SECTION 27-69-13,  
4 MISSISSIPPI CODE OF 1972, TO INCREASE THE EXCISE TAX ON CIGARETTES  
5 FROM 3.4¢ TO 4.4¢ PER CIGARETTE SOLD WITH A MAXIMUM LENGTH OF 120  
6 MILLIMETERS; TO INCREASE THE EXCISE TAX ON CIGARS, CHERROOTS,  
7 STOGIES, SNUFF, CHEWING AND SMOKING TOBACCO AND ALL OTHER TOBACCO  
8 PRODUCTS EXCEPT CIGARETTES, HEATED TOBACCO PRODUCTS AND ENDS  
9 PRODUCTS FROM 15% TO 25% OF THE MANUFACTURER'S LIST PRICE; TO LEVY  
10 AN EXCISE TAX OF 10¢ PER LIQUID MILLILITER OF NICOTINE ON ENDS  
11 PRODUCTS; TO AMEND SECTION 27-69-27, MISSISSIPPI CODE OF 1972, TO  
12 CONFORM; TO AMEND SECTION 75-23-5, MISSISSIPPI CODE OF 1972, TO  
13 INCREASE THE PRESUMED COST OF DOING BUSINESS BY A WHOLESALE DEALER  
14 UNDER THE UNFAIR CIGARETTE SALES LAW FROM 2% TO 4% OF THE BASIC  
15 COST OF CIGARETTES TO THE WHOLESALE DEALER; TO INCREASE THE  
16 PRESUMED COST OF DOING BUSINESS BY A RETAILER UNDER THE UNFAIR  
17 CIGARETTE SALES LAW FROM 6% TO 9-1/2% OF THE BASIC COST OF  
18 CIGARETTES TO THE RETAILER; AND FOR RELATED PURPOSES.

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

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

22 27-69-3. When used in this chapter:

23 (a) "State" means the State of Mississippi as  
24 geographically defined, and any and all waters under the  
25 jurisdiction of the State of Mississippi.



26 (b) "State Auditor" means the Auditor of Public  
27 Accounts of the State of Mississippi, or his legally appointed  
28 deputy, clerk or agent.

29 (c) "Commissioner" means the Commissioner of Revenue of  
30 the Department of Revenue, and his authorized agents and  
31 employees.

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

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

40 (f) "Tobacco" means any cigarettes, cigars, cheroots,  
41 stogies, smoking tobacco (including granulated, plug cut, crimp  
42 cut, ready rubbed, and other kinds and forms of tobacco, or  
43 substitutes therefor, prepared in such manner as to be suitable  
44 for smoking in a pipe or cigarette) and including plug and twist  
45 chewing tobacco and snuff, when such "tobacco" is manufactured and  
46 prepared for sale or personal consumption. All words used herein  
47 shall be given the meaning as defined in the regulations of the  
48 Treasury Department of the United States of America. The term  
49 "tobacco" also includes heated tobacco products and ENDS products.



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

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

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

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

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



75           (1) "Dealer" includes every person, firm, corporation  
76 or association of persons, except retailers as defined herein, who  
77 manufacture tobacco for distribution, for sale, for use or for  
78 consumption in the State of Mississippi.

79           The word "dealer" is further defined to mean any person,  
80 firm, corporation or association of persons, except retailers as  
81 defined herein, who imports tobacco from any state or foreign  
82 country for distribution, sale, use, or consumption in the State  
83 of Mississippi.

84           (m) "Distributing agent" includes every person in the  
85 state who acts as an agent of any person outside the State of  
86 Mississippi, by receiving tobacco in interstate commerce, and  
87 storing such tobacco in this state subject to distribution, or  
88 delivery upon order from the person outside the state to  
89 distributors, wholesalers, retailers and dealers.

90           (n) "Transient vendor" means and includes every person  
91 commonly and generally termed "peddlers" and every person acting  
92 for himself, or as an agent, employee, salesman, or in any  
93 capacity for another, whether as owner, bailee, or other custodian  
94 of tobacco, and going from person to person, dealer to dealer,  
95 house to house, or place to place, and selling or offering for  
96 sale at retail or wholesale tobacco, and every person who does not  
97 keep a regular place of business open at all times in regular  
98 hours, and every person who goes from person to person, dealer to  
99 dealer, house to house, or place to place, and sells or offers for



100 sale tobacco which he carries with him, and who delivers the same  
101 at the time of, or immediately after the sale, or without  
102 returning to the place of business operations (a permanent place  
103 of business within the state) between the taking of the order and  
104 the delivery of the tobacco, or

105 All persons who go from person to person, house to house,  
106 place to place, or dealer to dealer, soliciting orders by  
107 exhibiting samples, or taking orders, and thereafter making  
108 delivery of tobacco, or filling the order without carrying or  
109 sending the order to the permanent place of business, and  
110 thereafter making delivery of the tobacco pursuant to the terms of  
111 the order, or

112 All persons who go from person to person, place to place,  
113 house to house, or dealer to dealer, carrying samples and selling  
114 tobacco from samples, and afterwards making delivery without  
115 taking and sending an order therefor to a permanent place of  
116 business for the filling of the order, and delivery of the  
117 tobacco, or the exchange of tobacco having become damaged or  
118 unsalable, or the purchase by tobacco of advertising space, or

119 All persons who have in their possession, or under their  
120 control, any tobacco offered, or to be offered for sale or to be  
121 delivered, unless the sale or delivery thereof is to be made in  
122 pursuance of a bona fide order for the tobacco, to be sold or  
123 delivered, the order to be evidenced by an invoice or memorandum.



(o) "Contraband tobacco" means all tobacco found in the possession of any person whose permit to engage in dealing in 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



149 shipments to wholesalers or distributors are not paid by the  
150 manufacturer, then such freight charges required to be paid by the  
151 wholesalers and distributors shall be added to the amount paid to  
152 the manufacturer in order to determine "manufacturer's list  
153 price." In the case of a wholesaler or distributor whose place of  
154 business is located outside this state, the "manufacturer's list  
155 price" for tobacco sold in this state by such wholesaler or  
156 distributor shall in all cases be considered to be the same as  
157 that of a wholesaler or distributor located within this state.

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

163 (u) "Electronic Nicotine Delivery Systems (ENDS)  
164 product":

165 (i) Means any noncombustible product that employs  
166 a heating element, power source, electronic circuit or other  
167 electronic, chemical or mechanical means, regardless of shape or  
168 size, to produce vapor from nicotine in a solution;

169 (ii) Includes a consumable nicotine liquid  
170 solution suitable for use in an ENDS product, whether sold with  
171 the product or sold separately; and



(iii) Does not include any product regulated as a drug or device under Chapter V of the Federal Food, Drug, and Cosmetic Act (21 USC § 351 et seq.).

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

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

(a) On cigarettes, the rate of tax shall be \* \* \* Four and Four-tenths Cents (4.4¢) on each cigarette sold with a maximum length of one hundred twenty (120) millimeters; any cigarette in excess of this length shall be taxed as if it were two (2) or more cigarettes. Provided, however, if the federal tax rate on cigarettes in effect on June 1, 1985, is reduced, then the rate as provided herein shall be increased by the amount of the federal tax reduction. Such tax increase shall take effect on the first day of the month following the effective date of such reduction in the federal tax rate. Heated tobacco products shall not be taxed as cigarettes under this paragraph (a); however, this exclusion shall not affect heated tobacco products for any purposes related to Section 27-70-1 et seq.





(b) On cigars, cheroots, stogies, snuff, chewing and smoking tobacco and all other tobacco products except cigarettes \* \* \*, heated tobacco products and ENDS products, the rate of tax shall be \* \* \* twenty-five percent (25%) 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.

(d) On ENDS products, the rate of tax shall be Ten Cents (10¢) per liquid milliliter of nicotine.

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.



221       The above tax is levied upon the sale, use, gift, possession  
222 or consumption of tobacco within the State of Mississippi, and the  
223 impact of the tax levied by this chapter is hereby declared to be  
224 on the vendee, user, consumer or possessor of tobacco in this  
225 state; and when said tax is paid by any other person, such payment  
226 shall be considered as an advance payment and shall thereafter be  
227 added to the price of the tobacco and recovered from the ultimate  
228 consumer or user.

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

231       27-69-27. The payment of the tax imposed by this chapter  
232 shall be evidenced by affixing stamps to each individual package  
233 of cigarettes usually sold to consumers, as distinguished from  
234 cartons or larger units which are composed of a number of  
235 individual packages.

236       Except as otherwise provided in this paragraph, the stamp  
237 shall be affixed within seventy-two (72) hours after the receipt  
238 of the cigarettes by the wholesaler, and within forty-eight (48)  
239 hours after receipt of the cigarettes by the retailer; provided,  
240 that in the case a dealer conducts a wholesale and retail business  
241 at one (1) place of business, stamps shall be affixed within  
242 forty-eight (48) hours after receipt of the cigarettes. However,  
243 the provisions of this paragraph shall not apply to tobacco at the  
244 point it is purchased at a sale under Section 27-69-56. The stamp  
245 must be so securely affixed as to require the continued



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

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

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

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



271 authorized to grant such permit upon the execution and filing with  
272 the commissioner, by the applicant, a bond with surety companies,  
273 authorized to do business in Mississippi, as surety thereon, and  
274 conditioned for the strict compliance by the applicant, with the  
275 following conditions under which said privilege may be granted.

276       The person maintaining such stock of untaxed tobacco shall  
277 supply to the commissioner monthly, or at such times as the  
278 commissioner may require, complete invoices of all tobaccos  
279 received, and shall also supply correct invoices of all tobaccos  
280 removed from such "terminal" or warehouse, said invoices to  
281 contain the correct name and address of all persons to whom such  
282 tobacco shall be delivered or consigned, whether within or without  
283 the State of Mississippi.

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

290       **SECTION 4.** Section 75-23-5, Mississippi Code of 1972, is  
291 amended as follows:

292       75-23-5. The following words, terms and phrases, when used  
293 in the Unfair Cigarette Sales Law, shall have the meaning ascribed  
294 to them in this section except where the context clearly indicates  
295 a different meaning:



296 (a) "Person" shall mean and include any individual,  
297 firm, association, company, partnership, corporation, joint-stock  
298 company, club, agency, syndicate, the State of Mississippi,  
299 county, municipal corporation or other political subdivision of  
300 this state, receiver, trustee, fiduciary, or trade association.

301 (b) "Commission" or "department" shall mean the  
302 Department of Revenue of the State of Mississippi.

303 (c) "Cigarettes" shall mean and include any roll for  
304 smoking made wholly or in part of tobacco, irrespective of size or  
305 shape and whether or not such tobacco is flavored, adulterated or  
306 mixed with any other ingredient, the wrapper or cover of which is  
307 made of paper or any other substance or material, excepting  
308 tobacco.

309 (d) "Wholesaler" shall mean and include any person  
310 qualified as a wholesaler with the Department of Revenue of  
311 Mississippi and shall also mean and include any person other than  
312 a buying pool as defined herein, wherever resident or located, who  
313 brings or causes to be brought into this state unstamped  
314 cigarettes purchased directly from the manufacturer thereof and  
315 who maintains an established place of business where substantially  
316 all of the business is the sale of cigarettes and related  
317 merchandise at wholesale to cigarette licensees and where at all  
318 times a substantial stock of cigarettes and related merchandise is  
319 available for resale; provided, that seventy-five percent (75%)  
320 thereof are sold to retailers or other wholesalers not connected



321 with the wholesaler by reason of any business connection or  
322 otherwise; and also any person retailing cigarettes to consumers,  
323 provided, at least seventy-five percent (75%) of his purchases are  
324 made directly from the manufacturers thereof; and also any person  
325 in this state other than a buying pool as defined herein, who  
326 purchases cigarettes, from any other person who purchases from a  
327 manufacturer at least seventy-five percent (75%) of which are for  
328 purposes of resale to retailers in this state not connected with  
329 said wholesaler by reason of any business connection or otherwise  
330 and who maintains an established place of business where  
331 cigarettes and related merchandise are sold at wholesale to  
332 persons licensed under this law, and where at all times a  
333 substantial stock of cigarettes and related merchandise is  
334 available to all retailers for resale; and also any person in this  
335 state who acquires cigarettes solely for the purpose of resale in  
336 cigarette vending machines; provided, such person operated thirty  
337 (30) or more machines.

338 (e) "Retailer" shall mean and include any person who is  
339 engaged in this state in the business of selling cigarettes at  
340 retail and includes any group of persons, cooperative  
341 organizations, buying pools, and any other person or group of  
342 retailers purchasing cigarettes on a cooperative basis from  
343 licensed distributors or wholesalers. Any person placing a  
344 cigarette vending machine at, on or in any premises shall be  
345 deemed to be a retailer from each such vending machine.



(f) "Buying pool" means and includes any combination, corporation, association, affiliation or group of retail dealers operating jointly in the purchase, sale, exchange, or barter of cigarettes, the profits of which accrue directly or indirectly to such retail dealers.

(g) "Sale" or "sell" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes and distribution in any manner or by any means whatsoever.

(h) "Sell at wholesale," "sale at wholesale" and "wholesale sales" shall mean and include any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

(i) "Sell at retail," "sale at retail" or "retail sales" shall mean and include any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business.

(j) "Basic cost of cigarettes" shall mean whichever of the two (2) following amounts is lower, namely, (i) the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (ii) the lowest replacement cost of cigarettes to the wholesaler or retailer, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased (whether within or before the thirty-day period), less, in either of the two (2) cases, all trade discounts except customary



discounts for cash, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the invoice cost of the cigarettes to the wholesaler or retailer, as the case may be.

(k) (i) "Cost to wholesaler" shall mean the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him, and must include, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(ii) In the absence of proof of a lesser or higher cost of doing business by the wholesale dealer making the sale, the cost of doing business by the wholesale dealer shall be presumed to be \* \* \* four percent (4%) of the basic cost of cigarettes to the wholesale dealer, any fraction of a cent thus computed shall be rounded off to the next highest cent, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer, which cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be one-half of one percent (1/2 of 1%) of the basic cost of the cigarettes to the wholesale dealer, any fraction of a cent in computing the amount of the cartage shall be rounded off to the next highest cent.





(1) (i) "Cost to the retailer" shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him and must include, without limitation, labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(ii) In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be \* \* \* nine and one-half percent (9-1/2%) of the basic cost of cigarettes to the retailer. Any fraction of a cent thus computed shall be rounded off to the next highest cent.

(iii) In the case of any retail dealer who in connection with the retail dealer's purchase of any cigarettes shall receive not only the discounts ordinarily allowed upon purchases by a retail dealer but also in whole or in part the discounts ordinarily allowed upon purchases by a wholesale dealer, the cost of doing business by the retail dealer with respect to the cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business by the retail dealer, the sum of the cost of doing business by the retail dealer and, to the extent that he shall have received the full discounts ordinarily allowed to a wholesale dealer, the cost of doing business by a wholesale



421 dealer as hereinabove defined in paragraph (j)(ii) of this  
422 section.

423       **SECTION 5.** This act shall take effect and be in force from  
424 and after July 1, 2025.

