

By: Representative Snowden

To: Ways and Means

HOUSE BILL NO. 980

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DEFINITION OF WHOLESALER IN THE TOBACCO TAX LAWS; TO  
3 AMEND SECTION 27-69-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A  
4 RESIDENCY REQUIREMENT FOR A WHOLESALE TOBACCO SALES PERMIT; AND  
5 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 Chairman of the State Tax  
17 Commission of the State of Mississippi, and his authorized agents  
18 and 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, smoking tobacco (including granulated, plug cut, crimp



29 cut, ready rubbed, and other kinds and forms of tobacco, or  
30 substitutes therefor, prepared in such manner as to be suitable  
31 for smoking in a pipe or cigarette) and including plug and twist  
32 chewing tobacco and snuff, when such "tobacco" is manufactured and  
33 prepared for sale or personal consumption. All words used herein  
34 shall be given the meaning as defined in the regulations of the  
35 Treasury Department of the United States of America.

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

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

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

48 (j) "Wholesaler" includes dealers, whose principal  
49 business is that of a wholesale dealer or jobber, who is known to  
50 the retail trade as such, and whose place of business is located  
51 in Mississippi or in a state which affords reciprocity to  
52 wholesalers domiciled in Mississippi, who shall sell any taxable  
53 tobacco to retail dealers only for the purpose of resale, and who  
54 have tobacco sales to retail stores other than their own or their  
55 subsidiaries in Mississippi that exceed fifty percent (50%) of  
56 their total tobacco sales.

57 (k) "Retailer" includes every person, other than a  
58 wholesale dealer, as defined above, whose principal business is  
59 that of selling merchandise at retail, who shall sell, or offer  
60 for sale tobacco to the consumer. The sale of tobacco in quantity  
61 lots by retailers to other retailers, transient vendors, or other



62 persons, shall not be construed as wholesale and shall not qualify  
63 such retailer for a permit as a wholesaler.

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

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

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

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



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

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

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

113 (o) "Contraband tobacco" means all tobacco found in the  
114 possession of any person whose permit to engage in dealing in  
115 tobacco has been revoked by the commissioner; and any cigarettes  
116 found in the possession of any person to which the proper tax  
117 stamps have not been affixed; and any cigarettes improperly  
118 stamped when found in the possession of any person; and all other  
119 tobacco upon which the excise tax has not been paid.

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

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

125 (r) "Stamp" or "stamping," or the import of such word,  
126 when used in this chapter, means any manner of stamp or impression



127 permitted by the commissioner that carries out the purposes of the  
128 chapter in clearly indicating upon the packages of cigarettes  
129 taxed the due payment of the tax and clearly identifying, by  
130 serial number or otherwise, the permittee who affixed the stamp to  
131 the particular package.

132 (s) "Manufacturer's list price" means the full sales  
133 price at which tobacco is sold or offered for sale by a  
134 manufacturer to the wholesaler or distributor in this state  
135 without any deduction for freight, trade discount, cash discounts,  
136 special discounts or deals, cash rebates, or any other reduction  
137 from the regular selling price. In the event freight charges on  
138 shipments to wholesalers or distributors are not paid by the  
139 manufacturer, then such freight charges required to be paid by the  
140 wholesalers and distributors shall be added to the amount paid to  
141 the manufacturer in order to determine "manufacturer's list  
142 price." In the case of a wholesaler or distributor whose place of  
143 business is located outside this state, the "manufacturer's list  
144 price" for tobacco sold in this state by such wholesaler or  
145 distributor shall in all cases be considered to be the same as  
146 that of a wholesaler or distributor located within this state.

147 **SECTION 2.** Section 27-69-5, Mississippi Code of 1972, is  
148 amended as follows:

149 27-69-5. Every distributor, wholesaler, dealer or retailer  
150 who desires to become engaged in the sale or use of tobacco upon  
151 which a tax is required to be paid shall file with the  
152 commissioner an application for a permit to engage in such  
153 business. The application for a permit shall be filed on blanks  
154 to be furnished by the commissioner for that purpose. The  
155 application must be subscribed and sworn to by the person owning  
156 the business, or having an ownership interest therein. If the  
157 applicant is a corporation, a duly authorized agent shall execute  
158 the application. The application shall show the name of such  
159 person, and in case of partnership, the name of each partner



160 thereof, the person's post office address, the location of the  
161 place of business to which the permit shall apply, and the nature  
162 of the business in which engaged, and any other information the  
163 commissioner may require. No distributor, wholesaler, dealer or  
164 retailer shall sell any tobacco until such application has been  
165 filed, the prescribed permit fee paid, and the permit obtained.  
166 Except as otherwise provided in this paragraph, said permit shall  
167 expire on January 31 of each year. However, a retail permit shall  
168 continue in force during the time that the permit holder to whom  
169 it is issued continues in the same business at the same location  
170 unless such permit is revoked by the commissioner for cause or is  
171 revoked pursuant to any provision of the Mississippi Juvenile  
172 Tobacco Access Prevention Act in Sections 97-32-1 through  
173 97-32-23.

174 An application shall be filed, and a permit obtained for each  
175 place of business owned or operated by each distributor,  
176 wholesaler, dealer or retailer.

177 Upon receipt of the application and any permit fee  
178 hereinafter provided for, the commissioner may issue to every  
179 distributor, wholesaler, dealer or retailer, for the place of  
180 business designated, a nonassignable permit, authorizing the sale  
181 or use of tobacco in the state. Said permit shall provide that  
182 the same is revocable, and may be forfeited or suspended upon  
183 violation of any provision of this chapter, the Mississippi  
184 Tobacco Youth Access Prevention Act of 1997 or any rule or  
185 regulation adopted by the commissioner. If such permit is revoked  
186 or suspended, said distributor, wholesaler, dealer or retailer  
187 shall not sell any tobacco from such place of business until a new  
188 permit is granted, or the suspension of the old permit removed.

189 A permit cannot be transferred from one person to another,  
190 and the permit shall at all times be publicly displayed by the  
191 distributor, wholesaler, dealer or retailer in his place of  
192 business so as to be seen easily by the public. A permit may be



193 refused to any person previously convicted of violations of this  
194 chapter.

195 No wholesale permit shall be granted to an applicant that has  
196 not been a resident of the State of Mississippi for at least two  
197 (2) years.

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

