

By: Representatives Morris, Holland,  
Whittington, Brown, Compretta, Eaton, Flaggs,  
Mayo, McCoy, Miles, Moak, Peranich, Stringer,  
Watson

To: Medicaid; Ways and Means

HOUSE BILL NO. 410  
(As Passed the House)

1 AN ACT TO AMEND SECTION 43-13-115, MISSISSIPPI CODE OF 1972,  
2 TO REINSTATE MEDICAID ELIGIBILITY FOR THE POVERTY LEVEL AGED AND  
3 DISABLED (PLAD) GROUP; TO AMEND SECTIONS 27-69-3, 27-69-5,  
4 27-69-7, 27-69-11, 27-69-13 AND 27-69-41, MISSISSIPPI CODE OF  
5 1972, TO INCREASE THE EXCISE TAX ON CIGARETTES AND OTHER TOBACCO  
6 PRODUCTS; TO DEFINE THE TERMS "TOBACCO SETTLEMENT",  
7 "NONPARTICIPATING MANUFACTURER" AND "PARTICIPATING MANUFACTURER"  
8 FOR PURPOSES OF THE STATE TOBACCO TAX LAW; TO REQUIRE THAT  
9 CIGARETTE MANUFACTURERS PAY AN EQUITY ASSESSMENT OF TWO CENTS PER  
10 CIGARETTE ON ALL CIGARETTES SUBJECT TO THE CIGARETTE EXCISE TAX;  
11 TO PROVIDE THAT SUCH EQUITY ASSESSMENT SHALL BE INCREASED ANNUALLY  
12 BY THREE PERCENT OR THE INCREASE IN THE CONSUMER PRICE INDEX  
13 WHICHEVER IS GREATER; TO PROVIDE THAT CIGARETTE WHOLESALERS MUST  
14 PROVIDE CIGARETTE MANUFACTURERS MONTHLY REPORTS SETTING FORTH THE  
15 NUMBER OF CIGARETTES ON WHICH TOBACCO TAX STAMPS WERE AFFIXED  
16 DURING THE PRECEDING MONTH AND IDENTIFYING SUCH CIGARETTES BY  
17 MANUFACTURER, BRAND AND STYLE; TO PROVIDE A CREDIT AGAINST THE  
18 EQUITY ASSESSMENT FOR ANNUAL TOBACCO SETTLEMENT INSTALLMENTS MADE  
19 BY PARTICIPATING MANUFACTURERS; TO PROVIDE PENALTIES FOR THE  
20 FAILURE OF A CIGARETTE MANUFACTURER TO PAY THE EQUITY ASSESSMENT;  
21 TO PROVIDE PENALTIES FOR THE FAILURE OF A WHOLESALER TO PROVIDE  
22 INFORMATION TO A MANUFACTURER NECESSARY FOR THE MANUFACTURER TO  
23 COMPUTE THE EQUITY ASSESSMENT; TO AMEND SECTION 27-69-75,  
24 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE REVENUE DERIVED FROM  
25 THE TAX INCREASES AND THE EQUITY ASSESSMENT PROVIDED FOR BY THIS  
26 ACT SHALL BE DEPOSITED INTO THE SPECIAL FUND IN THE STATE TREASURY  
27 TO THE CREDIT OF THE GOVERNOR'S OFFICE-DIVISION OF MEDICAID; AND  
28 FOR RELATED PURPOSES.

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

30 **SECTION 1.** Section 43-13-115, Mississippi Code of 1972, is  
31 amended as follows:

32 43-13-115. Recipients of Medicaid shall be the following  
33 persons only:

34 (1) Those who are qualified for public assistance  
35 grants under provisions of Title IV-A and E of the federal Social  
36 Security Act, as amended, including those statutorily deemed to be  
37 IV-A and low income families and children under Section 1931 of  
38 the federal Social Security Act. For the purposes of this  
39 paragraph (1) and paragraphs (8), (17) and (18) of this section,  
40 any reference to Title IV-A or to Part A of Title IV of the

41 federal Social Security Act, as amended, or the state plan under  
42 Title IV-A or Part A of Title IV, shall be considered as a  
43 reference to Title IV-A of the federal Social Security Act, as  
44 amended, and the state plan under Title IV-A, including the income  
45 and resource standards and methodologies under Title IV-A and the  
46 state plan, as they existed on July 16, 1996. The Department of  
47 Human Services shall determine Medicaid eligibility for children  
48 receiving public assistance grants under Title IV-E. The division  
49 shall determine eligibility for low income families under Section  
50 1931 of the federal Social Security Act and shall redetermine  
51 eligibility for those continuing under Title IV-A grants.

52 (2) Those qualified for Supplemental Security Income  
53 (SSI) benefits under Title XVI of the federal Social Security Act,  
54 as amended, and those who are deemed SSI eligible as contained in  
55 federal statute. The eligibility of individuals covered in this  
56 paragraph shall be determined by the Social Security  
57 Administration and certified to the Division of Medicaid.

58 (3) Qualified pregnant women who would be eligible for  
59 Medicaid as a low income family member under Section 1931 of the  
60 federal Social Security Act if her child were born. The  
61 eligibility of the individuals covered under this paragraph shall  
62 be determined by the division.

63 (4) [Deleted]

64 (5) A child born on or after October 1, 1984, to a  
65 woman eligible for and receiving Medicaid under the state plan on  
66 the date of the child's birth shall be deemed to have applied for  
67 Medicaid and to have been found eligible for Medicaid under the  
68 plan on the date of that birth, and will remain eligible for  
69 Medicaid for a period of one (1) year so long as the child is a  
70 member of the woman's household and the woman remains eligible for  
71 Medicaid or would be eligible for Medicaid if pregnant. The  
72 eligibility of individuals covered in this paragraph shall be  
73 determined by the Division of Medicaid.

74           (6) Children certified by the State Department of Human  
75 Services to the Division of Medicaid of whom the state and county  
76 departments of human services have custody and financial  
77 responsibility, and children who are in adoptions subsidized in  
78 full or part by the Department of Human Services, including  
79 special needs children in non-Title IV-E adoption assistance, who  
80 are approvable under Title XIX of the Medicaid program. The  
81 eligibility of the children covered under this paragraph shall be  
82 determined by the State Department of Human Services.

83           (7) (a) Persons certified by the Division of Medicaid  
84 who are patients in a medical facility (nursing home, hospital,  
85 tuberculosis sanatorium or institution for treatment of mental  
86 diseases), and who, except for the fact that they are patients in  
87 that medical facility, would qualify for grants under Title IV,  
88 Supplementary Security Income (SSI) benefits under Title XVI or  
89 state supplements, and those aged, blind and disabled persons who  
90 would not be eligible for Supplemental Security Income (SSI)  
91 benefits under Title XVI or state supplements if they were not  
92 institutionalized in a medical facility but whose income is below  
93 the maximum standard set by the Division of Medicaid, which  
94 standard shall not exceed that prescribed by federal regulation;

95                       (b) Individuals who have elected to receive  
96 hospice care benefits and who are eligible using the same criteria  
97 and special income limits as those in institutions as described in  
98 subparagraph (a) of this paragraph (7).

99           (8) Children under eighteen (18) years of age and  
100 pregnant women (including those in intact families) who meet the  
101 financial standards of the state plan approved under Title IV-A of  
102 the federal Social Security Act, as amended. The eligibility of  
103 children covered under this paragraph shall be determined by the  
104 Division of Medicaid.

105           (9) Individuals who are:

106                   (a) Children born after September 30, 1983, who  
107 have not attained the age of nineteen (19), with family income  
108 that does not exceed one hundred percent (100%) of the nonfarm  
109 official poverty level;

110                   (b) Pregnant women, infants and children who have  
111 not attained the age of six (6), with family income that does not  
112 exceed one hundred thirty-three percent (133%) of the federal  
113 poverty level; and

114                   (c) Pregnant women and infants who have not  
115 attained the age of one (1), with family income that does not  
116 exceed one hundred eighty-five percent (185%) of the federal  
117 poverty level.

118           The eligibility of individuals covered in (a), (b) and (c) of  
119 this paragraph shall be determined by the division.

120                   (10) Certain disabled children age eighteen (18) or  
121 under who are living at home, who would be eligible, if in a  
122 medical institution, for SSI or a state supplemental payment under  
123 Title XVI of the federal Social Security Act, as amended, and  
124 therefore for Medicaid under the plan, and for whom the state has  
125 made a determination as required under Section 1902(e)(3)(b) of  
126 the federal Social Security Act, as amended. The eligibility of  
127 individuals under this paragraph shall be determined by the  
128 Division of Medicaid.

129                   (11) Individuals who are sixty-five (65) years of age  
130 or older or are disabled as determined under Section 1614(a)(3) of  
131 the federal Social Security Act, as amended, and whose income does  
132 not exceed one hundred thirty-five percent (135%) of the nonfarm  
133 official poverty line as defined by the Office Of Management and  
134 Budget and revised annually, and whose resources do not exceed  
135 those established by the Division of Medicaid. The eligibility of  
136 individuals covered under this paragraph shall be determined by  
137 the Division of Medicaid. If the State of Mississippi will be  
138 required after December 31, 2005, to pay one hundred percent

139 (100%) of the cost of prescription drugs for the individuals who  
140 are eligible for Medicaid under this paragraph (11), then this  
141 paragraph (11) shall stand repealed on January 1, 2006.

142 (12) Individuals who are qualified Medicare  
143 beneficiaries (QMB) entitled to Part A Medicare as defined under  
144 Section 301, Public Law 100-360, known as the Medicare  
145 Catastrophic Coverage Act of 1988, and whose income does not  
146 exceed one hundred percent (100%) of the nonfarm official poverty  
147 level as defined by the Office of Management and Budget and  
148 revised annually.

149 The eligibility of individuals covered under this paragraph  
150 shall be determined by the Division of Medicaid, and those  
151 individuals determined eligible shall receive Medicare  
152 cost-sharing expenses only as more fully defined by the Medicare  
153 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of  
154 1997.

155 (13) (a) Individuals who are entitled to Medicare Part  
156 A as defined in Section 4501 of the Omnibus Budget Reconciliation  
157 Act of 1990, and whose income does not exceed one hundred twenty  
158 percent (120%) of the nonfarm official poverty level as defined by  
159 the Office of Management and Budget and revised annually.  
160 Eligibility for Medicaid benefits is limited to full payment of  
161 Medicare Part B premiums.

162 (b) Individuals entitled to Part A of Medicare,  
163 with income above one hundred twenty percent (120%), but less than  
164 one hundred thirty-five percent (135%) of the federal poverty  
165 level, and not otherwise eligible for Medicaid Eligibility for  
166 Medicaid benefits is limited to full payment of Medicare Part B  
167 premiums. The number of eligible individuals is limited by the  
168 availability of the federal capped allocation at one hundred  
169 percent (100%) of federal matching funds, as more fully defined in  
170 the Balanced Budget Act of 1997.

171           The eligibility of individuals covered under this paragraph  
172 shall be determined by the Division of Medicaid.

173           (14) [Deleted]

174           (15) Disabled workers who are eligible to enroll in  
175 Part A Medicare as required by Public Law 101-239, known as the  
176 Omnibus Budget Reconciliation Act of 1989, and whose income does  
177 not exceed two hundred percent (200%) of the federal poverty level  
178 as determined in accordance with the Supplemental Security Income  
179 (SSI) program. The eligibility of individuals covered under this  
180 paragraph shall be determined by the Division of Medicaid and  
181 those individuals shall be entitled to buy-in coverage of Medicare  
182 Part A premiums only under the provisions of this paragraph (15).

183           (16) In accordance with the terms and conditions of  
184 approved Title XIX waiver from the United States Department of  
185 Health and Human Services, persons provided home- and  
186 community-based services who are physically disabled and certified  
187 by the Division of Medicaid as eligible due to applying the income  
188 and deeming requirements as if they were institutionalized.

189           (17) In accordance with the terms of the federal  
190 Personal Responsibility and Work Opportunity Reconciliation Act of  
191 1996 (Public Law 104-193), persons who become ineligible for  
192 assistance under Title IV-A of the federal Social Security Act, as  
193 amended, because of increased income from or hours of employment  
194 of the caretaker relative or because of the expiration of the  
195 applicable earned income disregards, who were eligible for  
196 Medicaid for at least three (3) of the six (6) months preceding  
197 the month in which the ineligibility begins, shall be eligible for  
198 Medicaid for up to twelve (12) months. The eligibility of the  
199 individuals covered under this paragraph shall be determined by  
200 the division.

201           (18) Persons who become ineligible for assistance under  
202 Title IV-A of the federal Social Security Act, as amended, as a  
203 result, in whole or in part, of the collection or increased

204 collection of child or spousal support under Title IV-D of the  
205 federal Social Security Act, as amended, who were eligible for  
206 Medicaid for at least three (3) of the six (6) months immediately  
207 preceding the month in which the ineligibility begins, shall be  
208 eligible for Medicaid for an additional four (4) months beginning  
209 with the month in which the ineligibility begins. The eligibility  
210 of the individuals covered under this paragraph shall be  
211 determined by the division.

212 (19) Disabled workers, whose incomes are above the  
213 Medicaid eligibility limits, but below two hundred fifty percent  
214 (250%) of the federal poverty level, shall be allowed to purchase  
215 Medicaid coverage on a sliding fee scale developed by the Division  
216 of Medicaid.

217 (20) Medicaid eligible children under age eighteen (18)  
218 shall remain eligible for Medicaid benefits until the end of a  
219 period of twelve (12) months following an eligibility  
220 determination, or until such time that the individual exceeds age  
221 eighteen (18).

222 (21) Women of childbearing age whose family income does  
223 not exceed one hundred eighty-five percent (185%) of the federal  
224 poverty level. The eligibility of individuals covered under this  
225 paragraph (21) shall be determined by the Division of Medicaid,  
226 and those individuals determined eligible shall only receive  
227 family planning services covered under Section 43-13-117(13) and  
228 not any other services covered under Medicaid. However, any  
229 individual eligible under this paragraph (21) who is also eligible  
230 under any other provision of this section shall receive the  
231 benefits to which he or she is entitled under that other  
232 provision, in addition to family planning services covered under  
233 Section 43-13-117(13).

234 The Division of Medicaid shall apply to the United States  
235 Secretary of Health and Human Services for a federal waiver of the  
236 applicable provisions of Title XIX of the federal Social Security

237 Act, as amended, and any other applicable provisions of federal  
238 law as necessary to allow for the implementation of this paragraph  
239 (21). The provisions of this paragraph (21) shall be implemented  
240 from and after the date that the Division of Medicaid receives the  
241 federal waiver.

242 (22) Persons who are workers with a potentially severe  
243 disability, as determined by the division, shall be allowed to  
244 purchase Medicaid coverage. The term "worker with a potentially  
245 severe disability" means a person who is at least sixteen (16)  
246 years of age but under sixty-five (65) years of age, who has a  
247 physical or mental impairment that is reasonably expected to cause  
248 the person to become blind or disabled as defined under Section  
249 1614(a) of the federal Social Security Act, as amended, if the  
250 person does not receive items and services provided under  
251 Medicaid.

252 The eligibility of persons under this paragraph (22) shall be  
253 conducted as a demonstration project that is consistent with  
254 Section 204 of the Ticket to Work and Work Incentives Improvement  
255 Act of 1999, Public Law 106-170, for a certain number of persons  
256 as specified by the division. The eligibility of individuals  
257 covered under this paragraph (22) shall be determined by the  
258 Division of Medicaid.

259 (23) Children certified by the Mississippi Department  
260 of Human Services for whom the state and county departments of  
261 human services have custody and financial responsibility who are  
262 in foster care on their eighteenth birthday as reported by the  
263 Mississippi Department of Human Services shall be certified  
264 Medicaid eligible by the Division of Medicaid until their  
265 twenty-first birthday.

266 (24) Individuals who have not attained age sixty-five  
267 (65), are not otherwise covered by creditable coverage as defined  
268 in the Public Health Services Act, and have been screened for  
269 breast and cervical cancer under the Centers for Disease Control



270 and Prevention Breast and Cervical Cancer Early Detection Program  
271 established under Title XV of the Public Health Service Act in  
272 accordance with the requirements of that act and who need  
273 treatment for breast or cervical cancer. Eligibility of  
274 individuals under this paragraph (24) shall be determined by the  
275 Division of Medicaid.

276 *(25) The division shall apply to the Centers for*  
277 *Medicare and Medicaid Services (CMS) for any necessary waivers to*  
278 *provide services to individuals who are sixty-five (65) years of*  
279 *age or older or are disabled as determined under Section*  
280 *1614(a)(3) of the federal Social Security Act, as amended, and*  
281 *whose income does not exceed one hundred thirty-five percent*  
282 *(135%) of the nonfarm official poverty level as defined by the*  
283 *Office of Management and Budget and revised annually, and whose*  
284 *resources do not exceed those established by the Division of*  
285 *Medicaid, and who are not otherwise covered by Medicare. Nothing*  
286 *contained in this paragraph (25) shall entitle an individual to*  
287 *benefits. The eligibility of individuals covered under this*  
288 *paragraph shall be determined by the Division of Medicaid.*

289 *(26) The division shall apply to the Centers for*  
290 *Medicare and Medicaid Services (CMS) for any necessary waivers to*  
291 *provide services to individuals who are sixty-five (65) years of*  
292 *age or older or are disabled as determined under Section*  
293 *1614(a)(3) of the federal Social Security Act, as amended, who are*  
294 *end stage renal disease patients on dialysis, cancer patients on*  
295 *chemotherapy or organ transplant recipients on anti-rejection*  
296 *drugs, whose income does not exceed one hundred thirty-five*  
297 *percent (135%) of the nonfarm official poverty level as defined by*  
298 *the Office of Management and Budget and revised annually, and*  
299 *whose resources do not exceed those established by the division.*  
300 *Nothing contained in this paragraph (26) shall entitle an*  
301 *individual to benefits. The eligibility of individuals covered*

302 *under this paragraph shall be determined by the Division of*  
303 *Medicaid.*

304 The division shall redetermine eligibility for all categories  
305 of recipients described in each paragraph of this section not less  
306 frequently than required by federal law.

307 **SECTION 2.** Section 27-69-3, Mississippi Code of 1972, is  
308 amended as follows:

309 \* \* \*

310 27-69-3. When used in this chapter:

311 (a) "State" means the State of Mississippi as  
312 geographically defined, and any and all waters under the  
313 jurisdiction of the State of Mississippi.

314 (b) "State Auditor" means the Auditor of Public  
315 Accounts of the State of Mississippi, or his legally appointed  
316 deputy, clerk or agent.

317 (c) "Commissioner" means the Chairman of the State Tax  
318 Commission of the State of Mississippi, and his authorized agents  
319 and employees.

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

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

328 (f) "Tobacco" means any cigarettes, cigars, cheroots,  
329 stogies, smoking tobacco (including granulated, plug cut, crimp  
330 cut, ready rubbed, and other kinds and forms of tobacco, or  
331 substitutes therefor, prepared in such manner as to be suitable  
332 for smoking in a pipe or cigarette) and including plug and twist  
333 chewing tobacco and snuff, when such "tobacco" is manufactured and  
334 prepared for sale or personal consumption. All words used herein

335 shall be given the meaning as defined in the regulations of the  
336 Treasury Department of the United States of America.

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

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

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

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

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

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

366 The word "dealer" is further defined to mean any person,  
367 firm, corporation or association of persons, except retailers as

368 defined herein, who imports tobacco from any state or foreign  
369 country for distribution, sale, use, or consumption in the State  
370 of Mississippi.

371 (m) "Distributing agent" includes every person in the  
372 state who acts as an agent of any person outside the State of  
373 Mississippi, by receiving tobacco in interstate commerce, and  
374 storing such tobacco in this state subject to distribution, or  
375 delivery upon order from said person outside the state to  
376 distributors, wholesalers, retailers and dealers.

377 (n) "Transient vendor" means and includes every person  
378 commonly and generally termed "peddlers" and every person acting  
379 for himself, or as an agent, employee, salesman, or in any  
380 capacity for another, whether as owner, bailee, or other custodian  
381 of tobacco, and going from person to person, dealer to dealer,  
382 house to house, or place to place, and selling or offering for  
383 sale at retail or wholesale tobacco, and every person who does not  
384 keep a regular place of business open at all times in regular  
385 hours, and every person who goes from person to person, dealer to  
386 dealer, house to house, or place to place, and sells or offers for  
387 sale tobacco which he carries with him, and who delivers the same  
388 at the time of, or immediately after the sale, or without  
389 returning to the place of business operations (a permanent place  
390 of business within the state) between the taking of the order and  
391 the delivery of the tobacco, or

392 All persons who go from person to person, house to house,  
393 place to place, or dealer to dealer, soliciting orders by  
394 exhibiting samples, or taking orders, and thereafter making  
395 delivery of tobacco, or filling the order without carrying or  
396 sending the order to the permanent place of business, and  
397 thereafter making delivery of the tobacco pursuant to the terms of  
398 the order, or

399 All persons who go from person to person, place to place,  
400 house to house, or dealer to dealer, carrying samples and selling

401 tobacco from samples, and afterwards making delivery without  
402 taking and sending an order therefor to a permanent place of  
403 business for the filling of the order, and delivery of the  
404 tobacco, or the exchange of tobacco having become damaged or  
405 unsalable, or the purchase by tobacco of advertising space, or

406 All persons who have in their possession, or under their  
407 control, any tobacco offered, or to be offered for sale or to be  
408 delivered, unless the sale or delivery thereof is to be made in  
409 pursuance of a bona fide order for the tobacco, to be sold or  
410 delivered, said order to be evidenced by an invoice or memorandum.

411 (o) "Contraband tobacco" means all tobacco found in the  
412 possession of any person whose permit to engage in dealing in  
413 tobacco has been revoked by the commissioner; and any cigarettes  
414 found in the possession of any person to which the proper tax  
415 stamps have not been affixed; and any cigarettes improperly  
416 stamped when found in the possession of any person; and all other  
417 tobacco upon which the excise tax has not been paid.

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

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

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

430 (s) "Manufacturer's list price" means the full sales  
431 price at which tobacco is sold or offered for sale by a  
432 manufacturer to the wholesaler or distributor in this state  
433 without any deduction for freight, trade discount, cash discounts,

434 special discounts or deals, cash rebates, or any other reduction  
435 from the regular selling price. In the event freight charges on  
436 shipments to wholesalers or distributors are not paid by the  
437 manufacturer, then such freight charges required to be paid by the  
438 wholesalers and distributors shall be added to the amount paid to  
439 the manufacturer in order to determine "manufacturer's list  
440 price." In the case of a wholesaler or distributor whose place of  
441 business is located outside this state, the "manufacturer's list  
442 price" for tobacco sold in this state by such wholesaler or  
443 distributor shall in all cases be considered to be the same as  
444 that of a wholesaler or distributor located within this state.

445 (t) "Tobacco settlement" means the settlement of the  
446 case of Mike Moore, Attorney General ex rel. State of Mississippi  
447 v. The American Tobacco Company et al. (Chancery Court of Jackson  
448 County, Mississippi, Cause No. 94-1429).

449 (u) "Nonparticipating manufacturer" means a  
450 manufacturer of cigarettes that is not a participating  
451 manufacturer in the tobacco settlement.

452 (v) "Participating manufacturer" means a manufacturer  
453 of cigarettes that is a participating manufacturer in the tobacco  
454 settlement.

455 **SECTION 3.** Section 27-69-5, Mississippi Code of 1972, is  
456 amended as follows:

457 27-69-5. Every manufacturer, distributor, wholesaler, dealer  
458 or retailer who desires to become engaged in the sale or use of  
459 tobacco upon which a tax is required to be paid shall file with  
460 the commissioner an application for a permit to engage in such  
461 business. The application for a permit shall be filed on blanks  
462 to be furnished by the commissioner for that purpose. The  
463 application must be subscribed and sworn to by the person owning  
464 the business, or having an ownership interest therein. If the  
465 applicant is a corporation, a duly authorized agent shall execute  
466 the application. The application shall show the name of such

467 person, and in case of partnership, the name of each partner  
468 thereof, the person's post office address, the location of the  
469 place of business to which the permit shall apply, and the nature  
470 of the business in which engaged, and any other information the  
471 commissioner may require. No manufacturer, distributor,  
472 wholesaler, dealer or retailer shall sell any tobacco until such  
473 application has been filed, the prescribed permit fee paid, and  
474 the permit obtained. Except as otherwise provided in this  
475 paragraph, said permit shall expire on January 31 of each year.  
476 However, a retail permit shall continue in force during the time  
477 that the permit holder to whom it is issued continues in the same  
478 business at the same location unless such permit is revoked by the  
479 commissioner for cause or is revoked pursuant to any provision of  
480 the Mississippi Juvenile Tobacco Access Prevention Act in Sections  
481 97-32-1 through 97-32-23.

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

485 Upon receipt of the application and any permit fee  
486 hereinafter provided for, the commissioner may issue to every  
487 manufacturer, distributor, wholesaler, dealer or retailer, for the  
488 place of business designated, a nonassignable permit, authorizing  
489 the sale or use of tobacco in the state. Said permit shall  
490 provide that the same is revocable, and may be forfeited or  
491 suspended upon violation of any provision of this chapter, the  
492 Mississippi Tobacco Youth Access Prevention Act of 1997 or any  
493 rule or regulation adopted by the commissioner. If such permit  
494 is revoked or suspended, said manufacturer, distributor,  
495 wholesaler, dealer or retailer shall not sell any tobacco from  
496 such place of business until a new permit is granted, or the  
497 suspension of the old permit removed.

498 A permit cannot be transferred from one person to another,  
499 and the permit shall at all times be publicly displayed by the

500 manufacturer, distributor, wholesaler, dealer or retailer in his  
501 place of business so as to be seen easily by the public. A permit  
502 may be refused to any person previously convicted of violations of  
503 this chapter.

504 **SECTION 4.** Section 27-69-7, Mississippi Code of 1972, is  
505 amended as follows:

506 27-69-7. In addition to the excise tax on each person  
507 selling, using, consuming, handling or distributing tobacco as  
508 hereinafter provided, it is hereby made the duty of the  
509 commissioner to collect a privilege tax of One Hundred Dollars  
510 (\$100.00) for each permit issued to every manufacturer,  
511 distributor, wholesaler or dealer doing business directly or  
512 indirectly in this state. However, the amount of the privilege  
513 tax to be paid for a permit issued for a period of less than  
514 twelve (12) months shall be the proportionate amount of the annual  
515 privilege tax that the number of months, or part of a month,  
516 remaining until the permit expiration date bears to twelve (12)  
517 months, but in no case shall the privilege tax be less than Ten  
518 Dollars (\$10.00).

519 Foreign manufacturers, wholesalers, or distributors shall  
520 secure a permit from the commissioner, upon the payment of a fee  
521 of One Hundred Dollars (\$100.00), and shall agree in an  
522 application sworn to and certified, that the excise tax shall be  
523 paid on all shipments of taxable tobacco into the State of  
524 Mississippi, that the required tax stamps shall be affixed to  
525 cigarettes, and that the commissioner, or his authorized agent,  
526 shall be permitted to inspect and audit their records of tobacco  
527 shipments into the State of Mississippi at any and all reasonable  
528 times.

529 It is further provided that any person who engages in any  
530 business for which a permit is required by this chapter, before  
531 procuring a permit, or after the permit is cancelled, shall be  
532 guilty of a misdemeanor, and punishable by a fine of not exceeding



533 Five Hundred Dollars (\$500.00), nor less than Fifty Dollars  
534 (\$50.00).

535 **SECTION 5.** Section 27-69-11, Mississippi Code of 1972, is  
536 amended as follows:

537 27-69-11. Any person engaged in the business of buying,  
538 selling, manufacturing or distributing within this state, tobacco  
539 as a wholesaler or manufacturer without having secured the  
540 required permit from the commissioner shall be guilty of a  
541 misdemeanor.

542 **SECTION 6.** Section 27-69-13, Mississippi Code of 1972, is  
543 amended as follows:

544 27-69-13. (1) There is \* \* \* imposed, levied and assessed,  
545 to be collected and paid as hereinafter provided in this chapter,  
546 an excise tax on each person or dealer in cigarettes, cigars,  
547 stogies, snuff, chewing tobacco, and smoking tobacco, or  
548 substitutes therefor, upon the sale, use, consumption, handling or  
549 distribution in the State of Mississippi, as follows:

550 (a) On cigarettes, the rate of tax shall be  
551 Eighteen-twentieths of One Cent (18/20 of 1¢) on each cigarette  
552 sold with a maximum length of one hundred twenty (120)  
553 millimeters; any cigarette in excess of this length shall be taxed  
554 as if it were two (2) or more cigarettes. \* \* \* However, if the  
555 federal tax rate on cigarettes in effect on June 1, 1985, is  
556 reduced, then the rate as provided in this paragraph (a) shall be  
557 increased by the amount of the federal tax reduction. The tax  
558 increase shall take effect on the first day of the month following  
559 the effective date of the reduction in the federal tax rate.

560 (b) (i) In addition to the excise tax levied by  
561 paragraph (a), beginning on the first day of the month following  
562 the effective date of House Bill No. 410, 2005 Regular Session,  
563 there is levied an excise tax of Two and One-half Cents (2-1/2¢)  
564 on each cigarette sold with a maximum length of one hundred twenty

565 (120) millimeters; any cigarette in excess of this length shall be  
566 taxed as if it were two (2) or more cigarettes.

567 (ii) On or before the fifteenth day of the month  
568 following the month of the beginning date of the excise tax on  
569 cigarettes that is levied by subparagraph (i) of this paragraph,  
570 and each succeeding month thereafter, the revenue derived from  
571 that excise tax shall be deposited into the special fund in the  
572 State Treasury to the credit of the Governor's Office-Division of  
573 Medicaid as provided in Section 27-69-75.

574 (c) On cigars, cheroots, stogies, snuff, chewing and  
575 smoking tobacco and all other tobacco products, except cigarettes,  
576 the rate of tax shall be fifteen percent (15%) of the  
577 manufacturer's list price.

578 (d) (i) In addition to the excise tax levied by  
579 paragraph (c), beginning on the first day of the month following  
580 the effective date of House Bill No. 410, 2005 Regular Session,  
581 there is levied an excise tax of ten percent (10%) of the  
582 manufacturer's list price on cigars, cheroots, stogies, snuff,  
583 chewing and smoking tobacco and all other tobacco products, except  
584 cigarettes.

585 (ii) On or before the fifteenth day of the month  
586 following the month of the beginning date of the excise tax on  
587 other tobacco products, except cigarettes, that is levied by  
588 subparagraph (i) of this paragraph, and each succeeding month  
589 thereafter, the revenue derived from that excise tax shall be  
590 deposited into the special fund in the State Treasury to the  
591 credit of the Governor's Office-Division of Medicaid as provided  
592 in Section 27-69-75.

593 (2) No stamp evidencing the tax \* \* \* levied on cigarettes  
594 by this section shall be of a denomination of less than One Cent  
595 (1¢), and whenever the tax computed at the rates \* \* \* prescribed  
596 on cigarettes in this section is a specified amount, plus a  
597 fractional part of One Cent (1¢), the package shall be stamped for

598 the next full cent. However, (a) the additional face value of  
599 stamps purchased to comply with taxes imposed by this section  
600 after June 1, 1985, shall be subject to a four percent (4%)  
601 discount or compensation to dealers for their services rather than  
602 the eight percent (8%) discount or compensation allowed by Section  
603 27-69-31; and (b) the additional face value of stamps purchased to  
604 comply with the taxes levied in subsections (1)(b) and (1)(d) of  
605 this section and the assessment imposed under subsection (5) of  
606 this section shall not be subject to any discount or compensation  
607 to dealers for their services.

608 (3) Every wholesaler shall purchase stamps as provided in  
609 this chapter, and affix the same to all packages of cigarettes  
610 handled by him as \* \* \* provided in this section.

611 (4) The \* \* \* tax levied by this chapter is levied upon the  
612 sale, use, gift, possession, or consumption of tobacco within the  
613 State of Mississippi, and the impact of the tax levied by this  
614 chapter is hereby declared to be on the vendee, user, consumer, or  
615 possessor of tobacco in this state. When the tax is paid by any  
616 other person, such payment shall be considered as an advance  
617 payment and shall thereafter be added to the price of the tobacco  
618 and recovered from the ultimate consumer or user.

619 (5) (a) In addition to the tax imposed under this section,  
620 beginning on the first day of the month following the effective  
621 date of House Bill No. 410, 2005 Regular Session, there is imposed  
622 an equity assessment in the amount of Two Cents (2¢) per cigarette  
623 on all cigarettes subject to the tax imposed under this section.  
624 The assessment shall be increased annually beginning January 1,  
625 2006, by the amount of three percent (3%) or the increase in the  
626 Consumer Price Index, whichever is greater. Such equity  
627 assessment is imposed on the manufacturer.

628 (b) A wholesaler shall provide a manufacturer a report  
629 by the tenth day of each month setting forth the number of  
630 cigarettes on which stamps were affixed by the wholesaler during

631 the preceding month and identifying such cigarettes by  
632 manufacturer, brand and style.

633 (c) A manufacturer shall remit the equity assessment to  
634 the state by the twentieth day of each month for cigarettes on  
635 which stamps were affixed during preceding month.

636 (d) A participating manufacturer shall be allowed a  
637 credit against the equity assessment for the amount of the annual  
638 tobacco settlement installment payments made to the state pursuant  
639 to the tobacco settlement by such manufacturer for the preceding  
640 year.

641 **SECTION 7.** Section 27-69-41, Mississippi Code of 1972, is  
642 amended as follows:

643 27-69-41. If any person subject to the provisions of this  
644 chapter, or any rules or regulations promulgated by the  
645 commissioner under authority hereof, shall be found to have failed  
646 to affix the stamps required, or to have the same affixed as  
647 herein provided, or to pay any tax due hereunder, or to have  
648 violated any of the provisions of this chapter, or rules and  
649 regulations promulgated by the commissioner in the administration  
650 of this chapter, there shall be collected from such person, in  
651 addition to the tax that may be due, a penalty of fifty percent  
652 (50%) of the tax due; and the commissioner, or his duly authorized  
653 representative, may make immediate demand upon such person for the  
654 payment of all such taxes and penalties. Provided, that the  
655 commissioner, for good reason shown, may remit all or any part of  
656 the penalties imposed, but the taxpayer must pay all taxes due and  
657 interest thereon, at the rate of twelve percent (12%) per annum.  
658 The keeping of any unstamped cigarettes or untaxed tobacco at a  
659 place of business where such articles are sold, shall be prima  
660 facie evidence of intent to violate the provisions of this  
661 chapter.

662 If a manufacturer does not pay the equity assessment imposed  
663 under Section 27-69-13(5), the manufacturer may be assessed a

664 penalty of ten percent (10%) of the amount of the equity  
665 assessment due or the manufacturer's products may be barred from  
666 sale or consumption, or both, in this state. If a wholesaler does  
667 not provide a manufacturer with the information required under  
668 Section 27-69-13(5), the commissioner may suspend sales of tobacco  
669 stamps to the wholesaler.

670 All administrative provisions of the Mississippi Sales Tax  
671 Law, including those which fix damages, penalties and interest for  
672 nonpayment of taxes and for noncompliance with the provisions of  
673 said chapter, and all other requirements and duties imposed upon  
674 taxpayers, shall apply to all persons liable for taxes under the  
675 provisions of this chapter, and the commissioner shall exercise  
676 all the power and authority and perform all the duties with  
677 respect to taxpayers under this chapter as are provided in the  
678 Sales Tax Law, except where there is conflict, then the provisions  
679 of this chapter shall control.

680 **SECTION 8.** Section 27-69-75, Mississippi Code of 1972, is  
681 amended as follows:

682 27-69-75. (1) All taxes levied by this chapter shall be  
683 payable to the commissioner in cash, or by personal check,  
684 cashier's check, bank exchange, post office money order or express  
685 money order, and shall be deposited by the commissioner in the  
686 State Treasury on the same day collected. No remittance other  
687 than cash shall be a final discharge of liability for the  
688 tax \* \* \* assessed and levied under this chapter, unless and until  
689 it has been paid in cash to the commissioner.

690 (2) The revenue derived from the taxes levied in subsections  
691 (1)(b) and (1)(d) of Section 27-69-13 and the assessment imposed  
692 under subsection (5) of Section 27-69-13 shall be deposited into  
693 the special fund in the State Treasury to the credit of the  
694 Governor's Office-Division of Medicaid to be expended by the  
695 division first (a) to fully fund Medicaid services for persons  
696 eligible for Medicaid under Section 43-13-115(11) (the Poverty

697 Level Aged and Disabled (PLAD) group) and then (b) for any other  
698 purposes authorized under the Mississippi Medicaid Law.

699       (3) All tobacco taxes collected, including tobacco license  
700 taxes, except for those revenues required to be deposited into the  
701 special fund as provided in subsection (2) of this section, shall  
702 be deposited into the State Treasury to the credit of the General  
703 Fund.

704       (4) Wholesalers who are entitled to purchase stamps at a  
705 discount, as provided by Section 27-69-31, may have consigned to  
706 them, without advance payment, those stamps, if and when the  
707 wholesaler \* \* \* gives to the commissioner a good and sufficient  
708 bond executed by some surety company authorized to do business in  
709 this state, conditioned to secure the payment for the stamps so  
710 consigned. The commissioner shall require payment for those  
711 stamps not later than thirty (30) days from the date the stamps  
712 were consigned.

713       **SECTION 9.** This act shall take effect and be in force from  
714 and after its passage; however, this act shall not take effect  
715 unless House Bill No. 1104, 2005 Regular Session, is enacted by  
716 the Legislature and becomes law.