

By: Representative Turner

To: Ways and Means

HOUSE BILL NO. 1031

1 AN ACT TO AMEND SECTIONS 27-65-85 AND 27-67-31, MISSISSIPPI  
2 CODE OF 1972, TO AUTHORIZE THE STATE TAX COMMISSION TO REVIEW  
3 CERTAIN RECORDS OF DELIVERY CARRIERS IN THIS STATE; TO REQUIRE  
4 SUCH CARRIERS TO MAKE CERTAIN RECORDS AND OTHER INFORMATION  
5 AVAILABLE FOR INSPECTION AND REVIEW BY THE STATE TAX COMMISSION;  
6 TO IMPOSE PENALTIES FOR FAILURE TO PROVIDE THOSE RECORDS TO THE  
7 COMMISSION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 27-65-85, Mississippi Code of 1972, is  
10 amended as follows:

11 27-65-85. (1) It shall be unlawful for any person to engage  
12 or continue in any business for which a tax is imposed by this  
13 chapter without procuring a license as required by Section  
14 27-65-27 of this chapter, or after such license has been revoked,  
15 or who shall fail or refuse to make the return provided to be made  
16 in Section 27-65-33 of this chapter. It shall be unlawful for any  
17 person to make any false or fraudulent return or false statement  
18 in any return, with intent to defraud the state or to evade the  
19 payment of the tax or any part thereof; or for any person to aid  
20 or abet another in any attempt to evade the payment of the tax, or  
21 any part thereof; or for the president, vice president, secretary  
22 or treasurer of any company to make or permit to be made for any  
23 company or association any false return, or any false statement in  
24 any return required by this chapter with the intent to evade the  
25 payment of the tax due. It shall be unlawful for any person to  
26 fail or refuse to permit the examination of any book, paper,  
27 account, record, or other data by the commissioner, or his duly  
28 appointed agent, as required by this chapter, including the  
29 records of any \* \* \* carrier, bank, wholesale or retail dealer in

30 any kind of merchandise whether in regard to his own or another's  
31 return; or to fail or refuse to permit the inspection or appraisal  
32 of any property by the commissioner or his duly appointed agent;  
33 or to refuse to offer testimony or produce any record as required  
34 by this chapter.

35 Except as otherwise provided, any person violating any of the  
36 provisions of this chapter shall be guilty of a misdemeanor and,  
37 on conviction thereof, shall be fined not more than Five Hundred  
38 Dollars (\$500.00), or imprisoned not exceeding six (6) months in  
39 the county jail, or punished by both such fine and imprisonment,  
40 at the discretion of the court, within the limitations aforesaid.

41 (2) (a) As used in this section, the word "carrier" means a  
42 common carrier, a contract carrier or a person operating a private  
43 vehicle that uses the public roads and highways of this state to  
44 transport merchandise for sale to a destination in this state. It  
45 shall be unlawful for any carrier to fail to have in his or her  
46 possession at all times while such merchandise is being  
47 transported, and allow inspection of, the invoices, sales tickets,  
48 bills of lading, waybill, freight bill or other documentation that  
49 will correctly disclose the nature and quantity of such  
50 merchandise and the consignor, consignee, the shipper, the  
51 intended recipient and destination of each article being  
52 transported. However, the records of a common carrier shall be  
53 open for inspection at any time for the purpose of obtaining any  
54 information bearing upon the administration of this chapter. In  
55 the case of any vehicle engaged in the transportation of  
56 merchandise for sale \* \* \*, the commissioner or his authorized  
57 agents may examine such documentation purporting to disclose the  
58 merchandise being transported and/or indicating the consignor,  
59 consignee, shippers, intended recipients and destination of such  
60 merchandise that is carried by the person in charge of such  
61 vehicle, and may compare them with the character and quantity of  
62 merchandise being transported and the consignee thereof, for the

63 purpose of ascertaining whether or not the provisions of law are  
64 being complied with. The absence of such documentation indicating  
65 to whom said merchandise belongs, or is to be delivered, in the  
66 hands of such person so engaged in transporting the merchandise,  
67 shall be prima facie evidence that such person is transporting  
68 such merchandise in violation of this chapter and liable for all  
69 penalties imposed under this section.

70 In addition to the production of documents while merchandise  
71 for sale is being transported, the records of a carrier shall be  
72 open for inspection at any time for the purpose of obtaining any  
73 information bearing upon the administration of this chapter.

74 (b) If information concerning the consignor, consignee,  
75 shipper, recipient, destination, nature, description, value,  
76 insured value, and/or quantity of any article transported by the  
77 carrier to a location in this state is maintained at any time in  
78 the form of electronic data on a computer information system  
79 and/or on an electronic data storage media to which the carrier  
80 has access, the carrier shall, upon request of the commissioner or  
81 his authorized agent, provide any or all such information to the  
82 commissioner or his authorized agent in a format specified by the  
83 commissioner or his authorized agent. The information shall also  
84 be provided on the media and/or by the method of transfer  
85 specified by the commissioner or his authorized agent. The  
86 carrier will bear the cost of providing this information to the  
87 commissioner or his authorized agent including, but not limited  
88 to, the cost of putting the information in the format specified  
89 and the cost of the media an/or method used to transfer the  
90 information to the commissioner or his authorized agent.

91 (c) All records of a carrier concerning the  
92 transportation of merchandise for sale to a destination in this  
93 state including, but not limited to, the information maintained in  
94 the form of electronic data on a computer information system  
95 and/or on an electronic data storage media, shall be maintained by

96 the carrier for three (3) years. If the carrier wishes to  
97 maintain such records and/or information for a period less than  
98 three (3) years, the carrier may request the commissioner to set a  
99 shorter period of time for the retention of such records and/or  
100 information. In setting a shorter retention period, the  
101 commissioner may require the carrier to provide him or his  
102 authorized agent any and all of the information maintained in the  
103 form of electronic data on a computer information system and/or on  
104 an electronic data storage media at prescribed intervals of time  
105 in a specified format. The information shall also be provided on  
106 the media and/or by the method of transfer specified by the  
107 commissioner or his authorized agent. The carrier will bear the  
108 cost of providing this information at these prescribed intervals  
109 including, but not limited to, the cost of putting the information  
110 in the format specified and the cost of the media and/or method  
111 used to transfer the information to the commissioner or his  
112 authorized agent.

113 (d) Any carrier who fails or refuses to provide to the  
114 commissioner or his authorized representative information from a  
115 computer information system and/or an electronic data storage  
116 media as provided in this subsection or who fails or refuses to  
117 maintain such information as provided above shall be in violation  
118 of this chapter and liable for all penalties imposed under this  
119 section. In addition, for the failure or refusal to provide  
120 and/or maintain the information, the commissioner may file suit in  
121 the chancery court of the First Judicial District of Hinds County,  
122 Mississippi, to compel production of the information and/or for  
123 any damages sustained by the State of Mississippi as a result of  
124 the carrier's failure or refusal to provide and/or maintain this  
125 information including, but not limited to, the sales tax revenue  
126 that could have been established from this information. If  
127 successful in this action in any respect, the commissioner shall

128 be entitled to his costs in bringing this action including, but  
129 not limited to, reasonable attorney's fees.

130 (e) Any carrier that fails or refuses to provide to the  
131 commissioner or his authorized representative information from a  
132 computer information system and/or an electronic data storage  
133 media as provided in this subsection or who fails or refuses to  
134 maintain the information as provided in this subsection shall be  
135 guilty of a misdemeanor and on conviction thereof shall be fined  
136 Five Hundred Dollars (\$500.00) for each day of violation.

137 \* \* \*

138 (3) The commissioner may require the attendance of any  
139 person and take his testimony with respect to any matter  
140 pertaining to any taxpayer's liability for taxes under this  
141 chapter, with power to administer oaths to such person or persons.  
142 If any person summoned as a witness shall fail to obey any summons  
143 to appear before the commissioner or his authorized agent, or  
144 shall refuse to testify or answer any material question or to  
145 produce any book, record, paper or other data when required to do  
146 so, such failure or refusal shall be reported to the Attorney  
147 General, the district attorney or county attorney, who shall  
148 thereupon institute proceedings in the circuit court of the county  
149 where such witness resides to compel obedience to any summons of  
150 the commissioner, or his authorized agent. Said proceedings shall  
151 be by petition for citation to such person refusing to obey such  
152 summons, to show cause why such person should not be required to  
153 obey such summons; and the circuit judge of the district may hear  
154 such petition in term time or vacation upon two (2) days' notice  
155 to the person sought to be cited; and the circuit judge may enter  
156 such order as he may deem proper, and punish any failure to comply  
157 with such order as for any other contempt of said court. Officers  
158 who serve summonses or subpoenas, and witnesses attending, shall  
159 receive like compensation as officers and witnesses in the justice

160 of the peace courts; and such compensation shall be paid from the  
161 proper appropriation for the administration of this chapter.

162 (4) In addition to the foregoing penalties, any person who  
163 shall knowingly swear to or verify any false or fraudulent return  
164 or statement, with the intent aforesaid shall be guilty of the  
165 offense of perjury and upon conviction thereof, shall be punished  
166 in the manner provided by law.

167 **SECTION 2.** Section 27-67-31, Mississippi Code of 1972, is  
168 amended as follows:

169 27-67-31. All administrative provisions of the sales tax  
170 law, and amendments thereto, including those which fix damages,  
171 penalties and interest for failure to comply with the provisions  
172 of said sales tax law, and all other requirements and duties  
173 imposed upon taxpayer, shall apply to all persons liable for use  
174 taxes under the provisions of this article. The commissioner  
175 shall exercise all power and authority and perform all duties with  
176 respect to taxpayers under this article as are provided in said  
177 sales tax law, except where there is conflict, then the provisions  
178 of this article shall control.

179 \* \* \*

180 On or before the fifteenth day of each month, the amount  
181 received from taxes, damages and interest under the provisions of  
182 this article during the preceding month shall be paid and  
183 distributed as follows:

184 (a) On or before July 15, 1994, through July 15, 2000,  
185 and each succeeding month thereafter, two and two hundred  
186 sixty-six one-thousandths percent (2.266%) of the total use tax  
187 revenue collected during the preceding month under the provisions  
188 of this article shall be deposited in the School Ad Valorem Tax  
189 Reduction Fund created pursuant to Section 37-61-35. On or before  
190 August 15, 2000, and each succeeding month thereafter, two and two  
191 hundred sixty-six one-thousandths percent (2.266%) of the total  
192 use tax revenue collected during the preceding month under the

193 provisions of this chapter shall be deposited into the School Ad  
194 Valorem Tax Reduction Fund created under Section 37-61-35 until  
195 such time that the total amount deposited into the fund during a  
196 fiscal year equals Four Million Dollars (\$4,000,000.00).  
197 Thereafter, the amounts diverted under this paragraph (a) during  
198 the fiscal year in excess of Four Million Dollars (\$4,000,000.00)  
199 shall be deposited into the Education Enhancement Fund created  
200 under Section 37-61-33 for appropriation by the Legislature as  
201 other education needs and shall not be subject to the percentage  
202 appropriation requirements set forth in Section 37-61-33.

203           (b) On or before July 15, 1994, and each succeeding  
204 month thereafter, nine and seventy-three one-thousandths percent  
205 (9.073%) of the total use tax revenue collected during the  
206 preceding month under the provisions of this article shall be  
207 deposited into the Education Enhancement Fund created pursuant to  
208 Section 37-61-33.

209           (c) On or before July 15, 1997, and on or before the  
210 fifteenth day of each succeeding month thereafter, the revenue  
211 collected under the provisions of this article imposed and levied  
212 as a result of Section 27-65-17(2) and the corresponding levy in  
213 Section 27-65-23 on the rental or lease of private carriers of  
214 passengers and light carriers of property as defined in Section  
215 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax  
216 Reduction Fund created pursuant to Section 27-51-105.

217           (d) On or before July 15, 1997, and on or before the  
218 fifteenth day of each succeeding month thereafter and after the  
219 deposits required by paragraphs (a) and (b) of this section are  
220 made, the remaining revenue collected under the provisions of this  
221 article imposed and levied as a result of Section 27-65-17(1) and  
222 the corresponding levy in Section 27-65-23 on the rental or lease  
223 of private carriers of passengers and light carriers of property  
224 as defined in Section 27-51-101 shall be deposited into the Motor

225 Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section  
226 27-51-105.

227 (e) The remainder of the amount received from taxes,  
228 damages and interest under the provisions of this article shall be  
229 paid into the General Fund of the State Treasury by the  
230 commissioner.

231 As hereinafter used in this section, the word "carrier" means  
232 a common carrier, a contract carrier or a person operating a  
233 private vehicle that uses the public roads and highways of this  
234 state to transport tangible personal property to a destination in  
235 this state. All records of a carrier shall be open for inspection  
236 at any time for the purpose of obtaining any information bearing  
237 upon the administration of this chapter. If information  
238 concerning the consignor, consignee, shipper, recipient,  
239 destination, nature, description, value, insured value, and/or  
240 quantity of any article of tangible personal property transported  
241 by the carrier to a location in this state is maintained at any  
242 time in the form of electronic data on a computer information  
243 system and/or on an electronic data storage media to which the  
244 carrier has access, the carrier shall, upon request of the  
245 commissioner or his authorized agent, provide any or all such  
246 information to the commissioner or his authorized agent in a  
247 format specified by the commissioner or his authorized agent. The  
248 information shall also be provided on the media and/or by the  
249 method of transfer specified by the commissioner or his authorized  
250 agent. The carrier will bear the cost of providing this  
251 information to the commissioner or his authorized agent including,  
252 but not limited to, the cost of putting the information in the  
253 form specified and the cost of the media and/or method used to  
254 transfer the information to the commissioner or his authorized  
255 agent.

256 All records of a carrier concerning the transportation of  
257 tangible personal property to a destination in this state



258 including, but not limited to, the information maintained in the  
259 form of electronic data on a computer information system and/or on  
260 an electronic data storage media, shall be maintained by the  
261 carrier for three (3) years. If the carrier wishes to maintain  
262 the records and/or information for a period less than three (3)  
263 years, the carrier may request the commissioner to set a shorter  
264 period of time for the retention of such records and/or  
265 information. In setting a shorter retention period, the  
266 commissioner may require the carrier to provide him or his  
267 authorized agent any and all of the information maintained in the  
268 form of electronic data on a computer information system and/or on  
269 electronic data storage media at prescribed intervals of time in a  
270 specified format. The information shall also be provided on the  
271 media and/or by the method of transfer specified by the  
272 commissioner or his authorized agent. The carrier will bear the  
273 cost of providing this information at these prescribed intervals  
274 including, but not limited to, the cost of putting the information  
275 in the format specified and the cost of the media and/or method  
276 used to transfer the information to the commissioner or his  
277 authorized agent. Any carrier who fails or refuses to provide to  
278 the commissioner or his authorized representative information from  
279 a computer information system and/or an electronic data storage  
280 media as provided above or who fails or refuses to maintain the  
281 information as provided above shall be in violation of this  
282 chapter and liable for all penalties imposed under this section.  
283 In addition, for the failure or refusal to provide and/or maintain  
284 the information, the commissioner may file suit in the Chancery  
285 Court of the First Judicial District of Hinds County, Mississippi,  
286 to compel production of such information and/or for any damages  
287 sustained by the State of Mississippi as a result of the carrier's  
288 failure or refusal to provide and/or maintain this information  
289 including, but not limited to, the use tax revenue that could have  
290 been established from this information. If successful in this

291 action in any respect, the commissioner shall be entitled to his  
292 costs in bringing this action including, but not limited to,  
293 reasonable attorney's fees. Any carrier that fails or refuses to  
294 provide to the commissioner or his authorized representative  
295 information from a computer information system and/or an  
296 electronic data storage media as provided above or who fails or  
297 refuses to maintain the information as provided above shall be  
298 guilty of a misdemeanor and on conviction thereof shall be fined  
299 Five Hundred Dollars (\$500.00) per day until such carrier provides  
300 or maintains the information that is required above.

301 In addition to the foregoing penalties, any person who shall  
302 knowingly swear to or verify any false or fraudulent return or  
303 statement, with the intent aforesaid shall be guilty of the  
304 offense of perjury and, on conviction thereof, shall be punished  
305 in the manner provided by law.

306 **SECTION 3.** This act shall take effect and be in force from  
307 and after July 1, 2005.