

By: Senator(s) Blount

To: Finance

SENATE BILL NO. 2211

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
 2 DEFINE THE TERMS "ELECTRONIC SMOKING DEVICE" AND "TOBACCO PRODUCT"
 3 FOR PURPOSES OF INCLUDING ELECTRONIC SMOKING DEVICES IN THE 15%
 4 EXCISE TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES; TO AMEND
 5 SECTIONS 27-69-13, 27-69-15 AND 27-69-27, MISSISSIPPI CODE OF
 6 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

10 27-69-3. When used in this chapter:

11 (a) "State" means the State of Mississippi as
 12 geographically defined, and any and all waters under the
 13 jurisdiction of the State of Mississippi.

14 (b) "State Auditor" means the Auditor of Public
 15 Accounts of the State of Mississippi, or his legally appointed
 16 deputy, clerk or agent.

17 (c) "Commissioner" means the Commissioner of Revenue of
 18 the Department of Revenue, and his authorized agents and
 19 employees.



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

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

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

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

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



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

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

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

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

66 The word "dealer" is further defined to mean any person,
67 firm, corporation or association of persons, except retailers as
68 defined herein, who imports tobacco from any state or foreign



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

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

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

92 All persons who go from person to person, house to house,
93 place to place, or dealer to dealer, soliciting orders by



94 exhibiting samples, or taking orders, and thereafter making
95 delivery of tobacco, or filling the order without carrying or
96 sending the order to the permanent place of business, and
97 thereafter making delivery of the tobacco pursuant to the terms of
98 the order, or

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

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

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



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

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

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

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



143 or distributor shall in all cases be considered to be the same as
144 that of a wholesaler or distributor located within this state.

145 (t) "Electronic smoking device" means any device that
146 can be used to deliver aerosolized or vaporized nicotine to the
147 person inhaling from the device, including, but not limited to, an
148 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic
149 smoking device includes any component, part or accessory of such a
150 device, whether or not sold separately, and includes any substance
151 intended to be aerosolized or vaporized during the use of the
152 device. Electronic smoking device does not include any battery or
153 battery charger when sold separately. In addition, electronic
154 smoking device does not include drugs, devices or combination
155 products authorized for sale by the U.S. Food and Drug
156 Administration, as those terms are defined in the Federal Food,
157 Drug and Cosmetic Act.

158 (u) "Tobacco product" means any product that is made
159 from or derived from tobacco, or that contains nicotine, that is
160 intended for human consumption or is likely to be consumed,
161 whether smoked, heated, chewed, absorbed, dissolved, inhaled or
162 ingested by any other means, including, but not limited to, a
163 cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus.
164 "Tobacco product" also means electronic smoking devices and any
165 component or accessory used in the consumption of a tobacco
166 product, such as filters, rolling papers, pipes and substances
167 used in electronic smoking devices, whether or not they contain



168 nicotine. "Tobacco product" does not include drugs, devices or
169 combination products authorized for sale by the U.S. Food and Drug
170 Administration, as those terms are defined in the Federal Food,
171 Drug and Cosmetic Act.

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

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

180 (a) On cigarettes, the rate of tax shall be Three and
181 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
182 length of one hundred twenty (120) millimeters; any cigarette in
183 excess of this length shall be taxed as if it were two (2) or more
184 cigarettes. Provided, however, if the federal tax rate on
185 cigarettes in effect on June 1, 1985, is reduced, then the rate as
186 provided herein shall be increased by the amount of the federal
187 tax reduction. Such tax increase shall take effect on the first
188 day of the month following the effective date of such reduction in
189 the federal tax rate.

190 (b) On cigars, cheroots, stogies, snuff, chewing and
191 smoking tobacco, electronic smoking devices and all other tobacco



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

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

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

207 The above tax is levied upon the sale, use, gift, possession
208 or consumption of tobacco within the State of Mississippi, and the
209 impact of the tax levied by this chapter is hereby declared to be
210 on the vendee, user, consumer or possessor of tobacco in this
211 state; and when said tax is paid by any other person, such payment
212 shall be considered as an advance payment and shall thereafter be
213 added to the price of the tobacco and recovered from the ultimate
214 consumer or user.

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



217 27-69-15. Any retailer, transient vendor, distributing
218 agent, salesman, or other dealer who shall receive any cigarettes
219 other than from a wholesaler having a permit as herein provided,
220 and not having the necessary stamps already affixed, shall, after
221 the receipt of such cigarettes, within the time limit herein
222 provided, present the same to some wholesaler having such permit,
223 for the affixing of the stamps required, and it shall be the duty
224 of such wholesaler, thereupon and upon the payment to him by such
225 retailer of the face value of the stamps required, to affix the
226 stamps to said cigarettes in the same manner as if the cigarettes
227 were handled and sold by such wholesaler, provided, that such
228 wholesaler, before affixing the stamps, shall require of the
229 retailer, transient vendor, distributing agent, salesman, or other
230 dealer, the original invoice for the cigarettes to be stamped, and
231 such wholesaler shall in each instance note upon the invoice, the
232 denominations and number of stamps affixed to the cigarettes
233 covered by said invoice, the notation to be made in ink, or other
234 manner not easy to erase, at the time the stamps are affixed.

235 It is further provided that, in addition hereto, the
236 wholesaler shall keep a separate record of all stamps affixed to
237 taxable cigarettes presented by retailers, transient vendors,
238 distributing agents, salesmen, or other dealers, showing the name
239 of the retailer, transient vendor, distributing agent, salesman,
240 or other dealer, name of the shipper, date of shipper's invoice,



241 the date stamps were affixed, denomination of stamps affixed, and
242 total value of stamps affixed.

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

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



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

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

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

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

283 27-69-27. The payment of the tax imposed by this chapter
284 shall be evidenced by affixing stamps to each individual package
285 of cigarettes usually sold to consumers, as distinguished from
286 cartons or larger units which are composed of a number of
287 individual packages.

288 Except as otherwise provided in this paragraph, the stamp
289 shall be affixed within seventy-two (72) hours after the receipt
290 of the cigarettes by the wholesaler, and within forty-eight (48)



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

300 The excise tax imposed on cigars, smoking tobacco, chewing
301 tobacco, snuff, electronic smoking devices and all other tobacco
302 products except cigarettes shall be computed by the application of
303 the excise tax rate to the manufacturer's list price on all
304 purchases of such tobacco products. The excise tax shall be due
305 and payable on or before the fifteenth day of the month next
306 succeeding the month in which the tax accrues. The tax shall be
307 filed with the commissioner on forms prescribed by the
308 commissioner.

309 Provided, however, manufacturers or other wholesale
310 distributors of tobacco, which are subject to the excise taxes
311 imposed by Section 27-69-13 of this chapter for the privilege of
312 selling or using such tobaccos within this state, who maintain
313 "terminals" or warehouses in which such tobaccos are stored, and
314 who sell only to licensed wholesale dealers within the state who
315 are qualified to purchase and affix the stamps required, may



316 maintain such "spot stocks," intended only for such sales, without
317 affixing the stamps or filing returns and paying the tax.

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

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

336 The penalty of such bond shall be determined by the
337 commissioner, in an amount sufficient to protect the State of
338 Mississippi from any loss of revenue which might occur by reason
339 of the failure of principal to strictly adhere to the requirement



340 that no tobacco would be sold from such stock within the State of
341 Mississippi, except to licensed wholesale dealers.

342 **SECTION 5.** This act shall take effect and be in force from
343 and after July 1, 2024.

