

1 HB139
2 164989-1
3 By Representative McMillan
4 RFD: Ways and Means General Fund
5 First Read: 05-MAR-15

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8 SYNOPSIS: Currently, the State of Alabama levies a tax
9 on various tobacco products. This bill would
10 increase the tax on cigarettes and other tobacco
11 products, and adjust the discount allowed on
12 tobacco stamp purchases.

13 This bill also provides for the distribution
14 of the proceeds from the tax increase on tobacco
15 products.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Sections 40-25-2, 40-25-2.1, 40-25-5, and
22 40-25-23, Code of Alabama 1975, relating to the state tax on
23 cigarettes and other tobacco products; to increase the state
24 tax on cigarettes and other tobacco products; to adjust the
25 discount allowed on tobacco stamp purchases; and to provide
26 for the distribution of the proceeds from the increase in tax
27 on cigarettes and other tobacco products.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 40-25-2, 40-25-2.1, 40-25-5, and
3 40-25-23, Code of Alabama 1975, are amended to read as
4 follows:

5 Section 2.

6 "§40-25-2.

7 (a) In addition to all other taxes of every kind now
8 imposed by law, every person, firm, corporation, club, or
9 association, within the State of Alabama, who sells or stores
10 or receives for the purpose of distribution to any person,
11 firm, corporation, club, or association within the State of
12 Alabama, cigars, cheroots, stogies, cigarettes, smoking
13 tobacco, chewing tobacco, snuff, or any substitute therefor,
14 either or all, shall pay to the State of Alabama for state
15 purposes only a license or privilege tax which shall be
16 measured by and graduated in accordance with the volume of
17 sales of such person, firm, corporation, club, or association
18 in Alabama. There is hereby levied license or privilege taxes
19 on articles containing tobacco enumerated in this article in
20 the following amounts:

21 (1) LITTLE CIGARS. Upon cigars of all descriptions,
22 including filtered cigars, made of tobacco, or any substitute
23 therefor, and weighing not more than three pounds per 1,000,
24 ~~\$.04~~ \$0.12 for each ten cigars, or fractional part thereof.

25 (2) FILTERED CIGARS. Upon filtered cigars that have
26 a cellulose acetate or similar integrated filter, made of

1 tobacco, or any substitute therefor, and weighing more than
2 three pounds per 1,000, ~~\$0.015~~ \$0.045 for each filtered cigar.

3 (3) CHERROOTS, STOGIES, CIGARS, ETC. Upon all other
4 cigars of any descriptions made of tobacco, or any substitute
5 therefor, ~~\$40.50~~ \$121.50 per thousand cigars, or ~~\$0.0405~~
6 \$0.1215 each.

7 (4) CIGARETTES. Upon all cigarettes made of tobacco,
8 or any substitute therefor, ~~21.25~~ 62.50 mills on each such
9 cigarette.

10 (5) SMOKING TOBACCO. Upon all smoking tobacco,
11 including granulated, plug cut, crimp cut, ready rubbed, and
12 other kinds and forms of tobacco prepared in such manner as to
13 be suitable for smoking in a pipe or cigarette, upon each
14 package: Weighing not more than one and one-eighth ounces, tax
15 ~~\$-.04~~ \$0.12; over one and one-eighth ounces, not exceeding two
16 ounces, tax ~~\$-.10~~ \$0.30; over two ounces, not exceeding three
17 ounces, tax ~~\$-.16~~ \$0.48; over three ounces, not exceeding four
18 ounces, tax ~~\$-.21~~ \$0.63; ~~\$-.06~~ \$0.18 additional tax for each
19 ounce or fractional part thereof over four ounces.

20 (6) CHEWING TOBACCO. Upon all chewing tobacco
21 prepared in such manner as to be suitable for chewing only and
22 not suitable for smoking as described and taxed in subdivision
23 (~~9~~ 5) of this subsection: ~~\$-.015~~ \$0.045 per ounce or fractional
24 part thereof.

25 (7) SNUFF. Upon each can or package of snuff
26 weighing not more than five-eighths ounces, ~~one cent~~ \$0.03
27 tax; over five-eighths ounces and not exceeding one and

1 five-eighths ounces, ~~\$.02~~ \$0.06 tax; over one and five-eighths
2 ounces and not exceeding two and one-half ounces, ~~\$.04~~ \$0.12
3 tax; over two and one-half ounces and not exceeding five
4 ounces (cans, packages, gullets), ~~\$.06~~ \$0.18 tax; over three
5 ounces and not exceeding five ounces (glasses, tumblers,
6 bottles), ~~seven cents~~ \$0.21 tax; over five ounces and not
7 exceeding six ounces, ~~\$.08~~ \$0.24 tax; weighing over six
8 ounces, an additional ~~\$.12~~ \$0.36 for each ounce or fractional
9 part thereof.

10 (b) Whenever in this article reference is made to
11 any manufactured tobacco products on which the tax is based on
12 weight, the weight as shown by the manufacturer or the federal
13 internal revenue stamp shall apply.

14 (c) When any articles or commodities subject to tax
15 in this article are given as prizes on punch boards, shooting
16 galleries, premiums, etc., the tax shall be based on the tax
17 rates in subsection (a) of such articles.

18 (d) The tax herein levied shall be paid to the state
19 through the use of stamps as herein provided. However, every
20 wholesaler, distributor, jobber, semijobber, or retail dealer
21 shall add the amount of the tax levied herein to the price of
22 the tobacco or tobacco products sold, it being the purpose and
23 intent of this provision that the tax levied is in fact a levy
24 on the ultimate consumer or user with the wholesaler,
25 distributor, jobber, semijobber, or retail dealer acting
26 merely as an agent of the state for the collection and payment
27 of the tax to the state. Therefore, notwithstanding any

1 exemptions from taxes which any such seller may now or
2 hereafter enjoy under the Constitution or laws of this or any
3 other state, or of the United States, he or she shall collect
4 the tax imposed hereunder from the purchaser or consumer, and
5 the amount of the tax shall constitute a debt from the
6 purchaser or consumer to the seller until paid. It shall be
7 unlawful for any person, firm, corporation, association, or
8 copartnership to fail or refuse to add to the sales price and
9 collect from the purchaser the amount of the tax to be added
10 to the sales price and collected from the purchaser hereunder.
11 Stamps in denominations to the amount of the tax or in
12 denominations specified pursuant to subsection (e) of this
13 section shall be affixed to the box or other container from or
14 in which tobacco products taxed by this section are normally
15 sold at retail. The stamps shall be affixed in such a manner
16 that their removal will require continued application of
17 water, steam, or heat; and in case of cigars, cheroots,
18 chewing tobacco and like manufactured tobacco products, where
19 sales are made from the original container, the stamps shall
20 be affixed to the box or container in such a way that the
21 stamps shall be torn in two or mutilated when such containers
22 or boxes are opened for the sale of the tobacco products. In
23 the case of cigarettes, smoking tobacco, snuff, and like
24 products sold at retail in packages, the required amount of
25 stamps to cover the tax shall be affixed to each individual
26 package or container. All taxable tobaccos herein enumerated,
27 when offered for sale, either at wholesale or retail, without

1 having stamps affixed in the manner set out by this article,
2 or without payment of the tax by return by the wholesaler,
3 jobber, semijobber, or registered retailer, shall be subject
4 to confiscation, in the manner provided for contraband goods
5 as set out in this article.

6 (e) The Commissioner of Revenue shall prepare and
7 issue stamps in denominations for the amount of the tax
8 imposed by this article provided that if the commissioner
9 determines that it is not economical for the state to have a
10 stamp prepared and issued for one or more particular types of
11 packages of tobacco products, then the commissioner may by
12 regulation prescribe the use of a stamp in a denomination
13 other than for the amount of the tax imposed with the
14 difference between the amount of tax actually imposed and the
15 amount of tax denominated by the stamp paid with the use of a
16 monthly report; or may require a monthly report without use of
17 a stamp to report the amount of taxes due.

18 (f) The increases levied by this section shall be
19 exclusive and shall be in lieu of any other or additional
20 local taxes and/or license fees, county or municipal, imposed
21 on the sale or use of cigarettes and/or other tobacco
22 products. Notwithstanding the foregoing, an act of the
23 Legislature or an ordinance or resolution by a taxing
24 authority passed or enacted on or before May 18, 2004,
25 imposing a local tax and/or license fee shall remain
26 operative, but no additional local tax and/or license fee may

1 thereafter be levied on the sale of cigarettes and/or other
2 tobacco products.

3 (g) Local taxes and/or license fees, county or
4 municipal, imposed on the sale or use of cigarettes shall be
5 paid to the local government through the use of stamps affixed
6 to the product as provided herein for the state tax. Provided,
7 however, this requirement shall not be interpreted to require
8 the Department of Revenue to prepare all stamps or to collect
9 all local taxes. Local governments may contract with another
10 entity to collect their local cigarette tax but all local
11 taxes must be collected as provided herein.

12 "§40-25-2.1.

13 (a) For the purposes of this section, the following
14 terms shall have the respective meanings ascribed to them by
15 this section:

16 (1) CIGAR WRAP. An individual tobacco wrapper that
17 is made wholly or in part from tobacco, including
18 reconstituted tobacco, whether in the form of tobacco leaf,
19 sheet, or tube, if the wrap is designed to be offered to or
20 purchased by a consumer.

21 (2) COMMISSIONER. The Commissioner of the Department
22 of Revenue of the State of Alabama.

23 (3) DEPARTMENT. The Department of Revenue of the
24 State of Alabama.

25 (4) NET TAX PROCEEDS. The entire proceeds from the
26 tax herein levied less costs of collection, refunds, grants,
27 and credits as may be authorized by law.

1 (5) PERSON. Individuals, firms, corporations,
2 partnerships, companies, or other agencies, associations,
3 incorporated or otherwise, singular or plural.

4 (6) STATE. The State of Alabama.

5 (7) WHOLESALE SALE. A sale of tangible personal
6 property by wholesalers to licensed retail merchants, jobbers,
7 dealers, or other wholesalers for resale and shall not include
8 a sale by wholesalers to users or consumers, not for resale.

9 (b) There is hereby levied a tax upon all cigar
10 wrappers manufactured using tobacco sold at wholesale in this
11 state or imported into this state for use, consumption, or
12 sale at retail. The tax shall be levied upon each package in
13 the following amounts: Weighing not more than one and
14 one-eighth ounces, ~~four~~ twelve cents (~~\$.04~~ \$0.12); over one
15 and one-eighth ounces, not exceeding two ounces, ~~ten~~ thirty
16 cents (~~\$.10~~ \$0.30); over two ounces, not exceeding three
17 ounces, ~~sixteen~~ forty-eight cents (~~\$.16~~ \$0.48); over three
18 ounces, not exceeding four ounces, ~~twenty-one~~ sixty-three
19 cents (~~\$.21~~ \$0.63); and ~~six~~ eighteen cents (~~\$.06~~ \$0.18)
20 additional tax for each ounce or fractional part thereof over
21 four ounces.

22 (c) Notwithstanding subsection (b), nothing in this
23 section shall be construed to apply to a cigar manufacturer
24 using wrappers made from tobacco applying those wrappers on a
25 finished cigar for sale at retail.

26 (d) Before any person engages in the business of
27 selling any of the items on which the tax levied by this

1 section has not been paid to the department, the person shall
2 make application to the department upon forms prepared by the
3 department for a license. The license shall be a condition
4 precedent to engaging or continuing in the business of selling
5 the items taxed under this chapter.

6 (e) On or before the 20th day of each month, each
7 person on whom the tax levied by this chapter is imposed shall
8 render to the department on forms prescribed by the department
9 a true and correct statement showing the amounts utilized in
10 the measurement of the tax and all other information as the
11 department may require and shall pay to the department the
12 amount of tax shown due.

13 (f) Any person subject to this section who shall
14 fail to make any report required of them by the department or
15 shall fail to keep any of the records required herein shall be
16 guilty of a Class B misdemeanor. Each month of such failure
17 shall constitute a separate offense.

18 (g) The tax imposed by this section shall be in
19 addition to all other licenses and taxes levied by law as a
20 condition precedent to engaging in any business taxable
21 hereunder.

22 (h) Any taxpayer who shall violate this section may
23 be restrained from continuing in business, and the proper
24 prosecution shall be instituted in the name of the State of
25 Alabama by its Attorney General or by the counsel of the
26 department until such person shall have complied with this
27 chapter.

1 (i) The department shall enforce this section and
2 may prescribe, adopt, promulgate, and enforce rules relating
3 to any matter or thing pertaining to the administration and
4 enforcement of this section and the collection of taxes,
5 penalties, and interest imposed by this section.

6 (j) The department for good cause may grant up to a
7 30-day extension for the time for making any return required
8 under this section.

9 (k) All revenue collected under the provisions of
10 this section shall be paid to the department and shall be
11 distributed as is provided for the distribution of funds
12 received from tobacco products other than cigarettes in
13 Section 40-25-23(3).

14 (l) The amount of money as shall be appropriated for
15 each fiscal year by the Legislature to the department with
16 which to pay the salaries and the cost of operation and
17 management of the department shall be deducted, as a first
18 charge thereon, from the taxes collected under the provisions
19 of this section; provided, however, that the expenditure of
20 such sum so appropriated shall be budgeted and allotted
21 pursuant to Sections 41-4-80 to 41-4-96, inclusive, and
22 limited to the amount appropriated to defray the expenses of
23 operating the department for each fiscal year.

24 "§40-25-5.

25 The Department of Revenue is hereby authorized and
26 directed to have prepared and distributed stamps suitable for
27 denoting the tax on all articles enumerated herein. Any

1 person, firm, corporation, or association of persons, other
2 than the Department of Revenue, who sells tobacco tax stamps
3 not affixed to tobacco sold and delivered by them, whether the
4 said stamps be genuine or counterfeit, shall be guilty of a
5 felony and punishable as set out in Section 40-25-6. When
6 wholesalers or jobbers have qualified as such with the
7 Department of Revenue, as provided in Section 40-25-16, and
8 desire to purchase stamps as prescribed herein for use on
9 taxable tobaccos sold and delivered by them, the Department of
10 Revenue shall allow on such sales of tobacco tax stamps a
11 discount of ~~seven and one-half~~ two and seven tenths percent
12 (2.7%) on the entire amount of the sale. Where wholesalers or
13 jobbers are entitled to purchase stamps at a discount as
14 herein provided, instead of the Department of Revenue selling
15 such stamps to such jobbers or wholesalers for cash, it may
16 consign such stamps, if and when such wholesaler or jobber
17 shall give to the Department of Revenue a good and sufficient
18 bond executed by some surety company authorized to do business
19 in this state, conditioned to secure the payment for the
20 stamps so consigned when and as they are used on manufactured
21 tobacco products by such wholesaler or jobber. Every
22 wholesaler or jobber purchasing stamps on consignment as
23 described herein, shall be required to make a full and
24 complete accounting and remittance on or before the twentieth
25 of each month for all stamps used on taxable tobaccos during
26 the preceding month. Every wholesaler or jobber refusing or
27 failing to comply with this section shall forfeit the

1 commission or discount on stamps used which he failed or
2 refused to account or remit for in the time allowed, and in
3 addition shall be charged interest on such delinquent amount
4 for each day delinquent at the rate of eight percent per
5 annum.

6 "§40-25-23.

7 All revenues collected under the provisions of this
8 article, except as otherwise provided, shall be paid to the
9 Department of Revenue ~~by check or draft made payable to the~~
10 ~~Treasurer of Alabama,~~ and shall be distributed in the
11 following manner:

12 (1) All of the revenue derived from the tax levied
13 upon cigarettes by Sections 40-25-2 and 40-25-41 shall be
14 deposited in the State Treasury and disbursed 66 percent to
15 the General Fund and the remaining balance of 34 percent
16 disbursed as follows: 38.82 percent of such revenue shall be
17 divided as follows:

18 a. Six and six one-hundredths percent to the credit
19 of the State Public Welfare Trust Fund, which is hereby
20 appropriated for general welfare purposes. In this section,
21 "general welfare purposes" means:

22 1. The administration of public assistance as set
23 out in Sections 38-2-5 and 38-4-1;

24 2. Services, including supplementation and
25 supplementary services under the federal Social Security Act,
26 to or on behalf of persons to whom such public assistance may
27 be given under Section 38-4-1;

1 3. Services to and on behalf of dependent,
2 neglected, or delinquent children; and

3 4. Investigative and referral services to and on
4 behalf of needy persons.

5 b. Nine and nine one-hundredths percent shall be set
6 apart and used for the following purposes only and in the
7 following order:

8 1. So much thereof as may be necessary for such
9 purpose is hereby appropriated and shall be used by the State
10 Treasurer to pay at their respective maturities the principal
11 and interest that will mature during the then current fiscal
12 year on all bonds at the time outstanding that may have been
13 issued by the State Industrial Development Authority under the
14 provisions of the following acts:

15 (i) Acts 1967, No. 231;

16 (ii) Acts 1971, No. 1420;

17 (iii) Acts 1973, No. 1039;

18 (iv) Acts 1975, No. 1217;

19 (v) Acts 1978, 2nd Ex. Sess., No. 99;

20 (vi) Acts 1981, No. 81-843;

21 (vii) Acts 1983, No. 83-925; and

22 (viii) Acts 1987, No. 87-550.

23 2. The balance thereafter remaining during each
24 fiscal year shall be paid into a special fund in the State
25 Treasury to be designated the "General and Mental Health
26 Fund," and is hereby appropriated and shall be distributed as
27 follows:

1 (i) Thirty-six percent of the said balance shall be
2 expended by the State Health Officer, with the approval of the
3 state Board of Health, for salaries, other expenses and
4 equipment purchases, incident to general health work;

5 (ii) Fifty-eight percent of the said balance shall
6 be paid to the Department of Mental Health created in Chapter
7 50 of Subtitle 2 of Title 22, to be expended by the said
8 department for such purposes as it may designate for the
9 provision of mental health services; and

10 (iii) Six percent of said balance shall be paid to
11 the Alabama Mental Health Board to be expended by said board
12 for such purposes as it may designate for the provision of
13 services to people with an intellectual disability.

14 c. Twelve and twelve one-hundredths percent shall be
15 set apart and used for the following purposes only and in the
16 following order:

17 1. So much thereof as may be necessary for such
18 purpose is hereby appropriated to the purpose of acquiring and
19 constructing mental health facilities in the state, and to
20 that end shall be used by the State Treasurer to pay, at their
21 respective maturities, the principal and interest that will
22 mature during the then current fiscal year on whichever of the
23 following may be issued:

24 (i) Any bonds of the state that may be issued for
25 acquisition and construction of mental health facilities under
26 Amendment 266 of the Constitution of Alabama; or

1 (ii) Any bonds that may be issued by the Alabama
2 Mental Health Finance Authority under the provisions of Acts
3 1988, Act No. 88-475.

4 2. The balance thereafter remaining during each
5 fiscal year shall be paid into a special fund in the State
6 Treasury, designated the "General and Mental Health Fund," and
7 is hereby appropriated and shall be distributed as follows:

8 (i) Thirty percent of said balance shall be expended
9 by the State Health Officer, with the approval of the state
10 Board of Health, for salaries, other expenses, and equipment
11 purchases incident to general health work; and

12 (ii) Seventy percent of the said balance shall be
13 paid to the Department of Mental Health created in Chapter 50
14 of Subtitle 2 of Title 22, and shall be used by the said
15 department for mental health purposes in the state.

16 d. Six and six one-hundredths percent shall be set
17 apart and used for the following purposes only and in the
18 following order:

19 1. So much thereof as may be necessary for such
20 purposes is hereby appropriated and shall be used by the State
21 Treasurer to pay, at their respective maturities, the
22 principal and interest that will mature during the then
23 current fiscal year on all bonds that may be issued by the
24 State Parks Development Authority under the provisions of Acts
25 1967, No. 272, which provided for the creation of said
26 authority and also provided for the submission of a

1 constitutional amendment to authorize the issuance of general
2 obligation bonds by said authority.

3 2. The balance thereafter remaining during each
4 fiscal year shall be deposited into a special fund in the
5 State Treasury to be designated the "State Parks Fund" and is
6 hereby appropriated and shall be distributed as follows: Said
7 fund may be expended by the State Director of Conservation at
8 his discretion and with the approval of the Governor for
9 salaries, other expenses, land acquisitions, equipment
10 purchases, capital additions or improvements, or other lawful
11 expenses relating to the state division of parks, monuments,
12 and historical sites.

13 e. Sixty-six and sixty-seven one-hundredths percent
14 to the credit of the General Fund.

15 (2) The remaining 61.18 percent of the revenue
16 derived from the tax levied on cigarettes by Sections 40-25-2
17 and 40-25-41 shall be deposited into the State Treasury and
18 allocated as follows:

19 a. Up to \$2 million received annually shall be
20 allocated to the various counties of the state levying a
21 cigarette tax to offset the administrative expenses of
22 obtaining local stamps to affix to cigarettes sold in their
23 jurisdiction for the purpose of collecting their local
24 cigarette tax and to provide a discount to wholesalers and
25 jobbers for affixing such stamps. These funds shall be
26 distributed by the Comptroller pro rata based on the actual
27 administrative expenses reported to the Comptroller by the

1 counties at the conclusion of each quarter of the fiscal year.
2 The Comptroller shall insure that such funds are distributed
3 as soon as possible following the receipt of such reports.
4 Failure of any county to submit such a report shall not
5 prohibit the Comptroller from distributing funds to the
6 remaining counties.

7 b. Remaining revenues to the General Fund to be used
8 for Medicaid services.

9 (3) All of the revenue derived from the tax levied
10 by Sections 40-25-2 and 40-25-41 upon tobacco products other
11 than cigarettes shall be deposited in the State Treasury to
12 the credit of the State General Fund.

13 Section 3. All laws or parts of laws which conflict
14 with this act are repealed.

15 Section 4. This act shall become effective July 1,
16 2015, following its passage and approval by the Governor, or
17 its otherwise becoming law.