

1 HB9  
2 170821-1  
3 By Representative Hill (M)  
4 RFD: Ways and Means General Fund  
5 First Read: 03-AUG-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, adjust the discount allowed on tobacco  
12 stamp purchases and require wholesalers and  
13 retailers of consumable vapor products to purchase  
14 an annual privilege license.

15 Currently, there is no tobacco tax on vapor  
16 products containing nicotine. This bill would add a  
17 new section to Chapter 25, Title 40, to levy a tax  
18 on vapor products containing nicotine and provide  
19 for definitions in the new section. This bill also  
20 provides for the distribution of the proceeds from  
21 the tax increase on tobacco products and the tax  
22 levied on vapor products containing nicotine.

23 Currently, there are no provisions to  
24 prevent cigarettes from being sold by a retailer  
25 for less than cost. This bill would add a new  
26 Chapter 37 to Title 8, entitled "Unfair Retailer's  
27 Cigarette Sales Law."

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT

5  
6 To amend Sections 40-12-72, 40-12-73, 40-25-2,  
7 40-25-2.1, 40-25-5, 40-25-23, 40-25-40, and 40-25-41, Code of  
8 Alabama 1975, relating to the state tax on cigarettes and  
9 other tobacco products; to increase the state tax on  
10 cigarettes and other tobacco products; to adjust the discount  
11 allowed on tobacco stamp purchases; to add a new section to  
12 Chapter 25, Title 40 to require wholesalers and retailers of  
13 consumable vapor products to purchase an annual privilege  
14 license; to levy a tax on consumable vapor products; to add a  
15 new chapter 37 to Title 8; and to provide for the distribution  
16 of the proceeds from the tax on consumable vapor products and  
17 the increase in tax on cigarettes and other tobacco products.  
18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 40-12-72, 40-12-73, 40-25-2,  
20 40-25-2.1, 40-25-5, 40-25-23, 40-25-40, and 40-25-41, Code of  
21 Alabama 1975, are amended to read as follows:

22 "§40-12-72.

23 Each retail dealer in consumable vapor products as  
24 defined in Section 40-25-2.2, cigars, cheroots, stogies,  
25 cigarettes, smoking tobacco, chewing tobacco, or snuff, or any  
26 substitute therefor, either or all, shall pay to the state the  
27 following privilege license tax: In cities of 25,000

1 inhabitants and over, \$15; in cities or towns of 10,000  
2 inhabitants and less than 25,000 inhabitants, \$10; in cities  
3 or towns of 5,000 inhabitants and less than 10,000  
4 inhabitants, \$5; in cities or towns of 2,000 inhabitants and  
5 less than 5,000 inhabitants, \$3; in all other places, whether  
6 incorporated or not, \$2. This privilege license tax is levied  
7 on each place of business owned or operated by retail dealers,  
8 whether under the same roof or not. The phrase "retail dealer"  
9 as used in this section shall include every person, firm,  
10 corporation, club, or association, other than a wholesale  
11 dealer as defined in Section 40-12-73, who shall sell or store  
12 or offer for sale any one or more of the articles enumerated  
13 herein, irrespective of quantity or amount, or the number of  
14 sales. The privilege license tax herein defined shall be in  
15 addition to the sales tax as provided in Section 40-25-2.

16 "§40-12-73.

17 Each wholesale dealer in consumable vapor products  
18 as defined in Section 40-25-2.2, cigars, cheroots, stogies,  
19 cigarettes, smoking tobacco, chewing tobacco, snuff, or any  
20 substitute therefor, either or all, shall pay one privilege  
21 license tax to the state of \$100 and \$5 to each county in  
22 which such wholesale dealer does business. The phrase  
23 "wholesale dealer" as used in this section shall include  
24 persons, firms, corporations, clubs, or associations who shall  
25 sell or store or offer to sell any one or more of the articles  
26 enumerated herein to retail dealers for the purpose of resale

1 only. The privilege license tax herein levied shall be in  
2 addition to the sales tax as provided in Section 40-25-2.

3 "§40-25-2.

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

18 (1) LITTLE CIGARS. Upon cigars of all descriptions,  
19 including filtered cigars, made of tobacco, or any substitute  
20 therefor, and weighing not more than three pounds per 1,000,  
21 ~~\$.04~~ \$0.06 for each ten cigars, or fractional part thereof.

22 (2) FILTERED CIGARS. Upon filtered cigars that have  
23 a cellulose acetate or similar integrated filter, made of  
24 tobacco, or any substitute therefor, and weighing more than  
25 three pounds per 1,000, ~~\$0.015~~ \$0.02 for each filtered cigar.

26 (3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other  
27 cigars of any descriptions made of tobacco, or any substitute

1 therefor, ~~\$40.50~~ \$61.00 per thousand cigars, or ~~\$0.0405~~ \$0.061  
2 each.

3 (4) CIGARETTES. Upon all cigarettes made of tobacco,  
4 or any substitute therefor, ~~21.25~~ 33.75 mills on each such  
5 cigarette.

6 (5) SMOKING TOBACCO. Upon all smoking tobacco,  
7 including granulated, plug cut, crimp cut, ready rubbed, and  
8 other kinds and forms of tobacco prepared in such manner as to  
9 be suitable for smoking in a pipe or cigarette, upon each  
10 package: Weighing not more than one and one-eighth ounces, tax  
11 ~~\$.04~~ \$0.06; over one and one-eighth ounces, not exceeding two  
12 ounces, tax ~~\$.10~~ \$0.15; over two ounces, not exceeding three  
13 ounces, tax ~~\$.16~~ \$0.24; over three ounces, not exceeding four  
14 ounces, tax ~~\$.21~~ \$0.32; ~~\$.06~~ \$0.09 additional tax for each  
15 ounce or fractional part thereof over four ounces.

16 (6) CHEWING TOBACCO. Upon all chewing tobacco  
17 prepared in such manner as to be suitable for chewing only and  
18 not suitable for smoking as described and taxed in subdivision  
19 (95) of this subsection: ~~\$.015~~ \$0.02 per ounce or fractional  
20 part thereof.

21 (7) SNUFF. Upon each can or package of snuff  
22 weighing not more than five-eighths ounces, ~~one-cent~~ \$0.02  
23 tax; over five-eighths ounces and not exceeding one and  
24 five-eighths ounces, ~~\$.02~~ \$0.03 tax; over one and  
25 five-eighths ounces and not exceeding two and one-half ounces,  
26 ~~\$.04~~ \$0.06 tax; over two and one-half ounces and not exceeding  
27 five ounces (cans, packages, gullets), ~~\$.06~~ \$0.09 tax; over

1 three ounces and not exceeding five ounces (glasses, tumblers,  
2 bottles), ~~seven cents~~ \$0.11 tax; over five ounces and not  
3 exceeding six ounces, ~~\$0.08~~ \$0.12 tax; weighing over six  
4 ounces, an additional ~~\$0.12~~ \$0.18 for each ounce or fractional  
5 part thereof.

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

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

14 (d) The tax herein levied shall be paid to the state  
15 through the use of stamps as herein provided. However, every  
16 wholesaler, distributor, jobber, semijobber, or retail dealer  
17 shall add the amount of the tax levied herein to the price of  
18 the tobacco or tobacco products sold, it being the purpose and  
19 intent of this provision that the tax levied is in fact a levy  
20 on the ultimate consumer or user with the wholesaler,  
21 distributor, jobber, semijobber, or retail dealer acting  
22 merely as an agent of the state for the collection and payment  
23 of the tax to the state. Therefore, notwithstanding any  
24 exemptions from taxes which any such seller may now or  
25 hereafter enjoy under the Constitution or laws of this or any  
26 other state, or of the United States, he or she shall collect  
27 the tax imposed hereunder from the purchaser or consumer, and

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



1 to confiscation, in the manner provided for contraband goods  
2 as set out in this article.

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

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

26 (g) Local taxes and/or license fees, county or  
27 municipal, imposed on the sale or use of cigarettes shall be

1 paid to the local government through the use of stamps affixed  
2 to the product as provided herein for the state tax. Provided,  
3 however, this requirement shall not be interpreted to require  
4 the Department of Revenue to prepare all stamps or to collect  
5 all local taxes. Local governments may contract with another  
6 entity to collect their local cigarette tax but all local  
7 taxes must be collected as provided herein.

8 "§40-25-2.1.

9 (a) For the purposes of this section, the following  
10 terms shall have the respective meanings ascribed to them by  
11 this section:

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

17 (2) COMMISSIONER. The Commissioner of the Department  
18 of Revenue of the State of Alabama.

19 (3) DEPARTMENT. The Department of Revenue of the  
20 State of Alabama.

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

24 (5) PERSON. Individuals, firms, corporations,  
25 partnerships, companies, or other agencies, associations,  
26 incorporated or otherwise, singular or plural.

27 (6) STATE. The State of Alabama.

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

5 (b) There is hereby levied a tax upon all cigar  
6 wrappers manufactured using tobacco sold at wholesale in this  
7 state or imported into this state for use, consumption, or  
8 sale at retail. The tax shall be levied upon each package in  
9 the following amounts: Weighing not more than one and  
10 one-eighth ounces, ~~four~~ six cents (~~\$.04~~\$0.06); over one and  
11 one-eighth ounces, not exceeding two ounces, ~~ten~~ fifteen cents  
12 (~~\$.10~~ \$0.15); over two ounces, not exceeding three ounces,  
13 ~~sixteen~~ twenty-four cents (~~\$.16~~\$0.24); over three ounces, not  
14 exceeding four ounces, ~~twenty-one~~ thirty-two cents  
15 (~~\$.21~~\$0.32); and ~~six~~ nine cents (~~\$.06~~\$0.09) additional tax for  
16 each ounce or fractional part thereof over four ounces.

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

21 (d) Before any person engages in the business of  
22 selling any of the items on which the tax levied by this  
23 section has not been paid to the department, the person shall  
24 make application to the department upon forms prepared by the  
25 department for a license. The license shall be a condition  
26 precedent to engaging or continuing in the business of selling  
27 the items taxed under this chapter.

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

8           (f) Any person subject to this section who shall  
9 fail to make any report required of them by the department or  
10 shall fail to keep any of the records required herein shall be  
11 guilty of a Class B misdemeanor. Each month of such failure  
12 shall constitute a separate offense.

13           (g) The tax imposed by this section shall be in  
14 addition to all other licenses and taxes levied by law as a  
15 condition precedent to engaging in any business taxable  
16 hereunder.

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

23           (i) The department shall enforce this section and  
24 may prescribe, adopt, promulgate, and enforce rules relating  
25 to any matter or thing pertaining to the administration and  
26 enforcement of this section and the collection of taxes,  
27 penalties, and interest imposed by this section.

1 (j) The department for good cause may grant up to a  
2 30-day extension for the time for making any return required  
3 under this section.

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

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

19 "§40-25-5.

20 The Department of Revenue is hereby authorized and  
21 directed to have prepared and distributed stamps suitable for  
22 denoting the tax on all articles enumerated herein. Any  
23 person, firm, corporation, or association of persons, other  
24 than the Department of Revenue, who sells tobacco tax stamps  
25 not affixed to tobacco sold and delivered by them, whether the  
26 said stamps be genuine or counterfeit, shall be guilty of a  
27 felony and punishable as set out in Section 40-25-6. When

1 wholesalers or jobbers have qualified as such with the  
2 Department of Revenue, as provided in Section 40-25-16, and  
3 desire to purchase stamps as prescribed herein for use on  
4 taxable tobaccos sold and delivered by them, the Department of  
5 Revenue shall allow on such sales of tobacco tax stamps a  
6 discount of ~~seven and one-half~~ four and three-quarters percent  
7 (4.75%) on the entire amount of the sale. Where wholesalers or  
8 jobbers are entitled to purchase stamps at a discount as  
9 herein provided, instead of the Department of Revenue selling  
10 such stamps to such jobbers or wholesalers for cash, it may  
11 consign such stamps, if and when such wholesaler or jobber  
12 shall give to the Department of Revenue a good and sufficient  
13 bond executed by some surety company authorized to do business  
14 in this state, conditioned to secure the payment for the  
15 stamps so consigned when and as they are used on manufactured  
16 tobacco products by such wholesaler or jobber. Every  
17 wholesaler or jobber purchasing stamps on consignment as  
18 described herein, shall be required to make a full and  
19 complete accounting and remittance on or before the twentieth  
20 of each month for all stamps used on taxable tobaccos during  
21 the preceding month. Every wholesaler or jobber refusing or  
22 failing to comply with this section shall forfeit the  
23 commission or discount on stamps used which he failed or  
24 refused to account or remit for in the time allowed, and in  
25 addition shall be charged interest on such delinquent amount  
26 for each day delinquent at the rate of eight percent per  
27 annum.

1           "§40-25-23.

2           All revenues collected under the provisions of this  
3 article, except as otherwise provided, shall be paid to the  
4 Department of Revenue ~~by check or draft made payable to the~~  
5 ~~Treasurer of Alabama~~, and shall be distributed in the  
6 following manner:

7           (1) All of the revenue derived from the tax levied  
8 upon cigarettes by Sections 40-25-2 and 40-25-41 shall be  
9 deposited in the State Treasury and ~~38.82~~ 25 percent of such  
10 revenue shall be divided as follows:

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

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

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

21           3. Services to and on behalf of dependent,  
22 neglected, or delinquent children; and

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

25           b. Nine and nine one-hundredths percent shall be set  
26 apart and used for the following purposes only and in the  
27 following order:

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

- 8           (i) Acts 1967, No. 231;
- 9           (ii) Acts 1971, No. 1420;
- 10          (iii) Acts 1973, No. 1039;
- 11          (iv) Acts 1975, No. 1217;
- 12          (v) Acts 1978, 2nd Ex. Sess., No. 99;
- 13          (vi) Acts 1981, No. 81-843;
- 14          (vii) Acts 1983, No. 83-925; and
- 15          (viii) Acts 1987, No. 87-550.

16           2. The balance thereafter remaining during each  
17 fiscal year shall be paid into a special fund in the State  
18 Treasury to be designated the "General and Mental Health  
19 Fund," and is hereby appropriated and shall be distributed as  
20 follows:

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

25           (ii) Fifty-eight percent of the said balance shall  
26 be paid to the Department of Mental Health created in Chapter  
27 50 of Subtitle 2 of Title 22, to be expended by the said



1 department for such purposes as it may designate for the  
2 provision of mental health services; and

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

7 c. Twelve and twelve one-hundredths percent shall be  
8 set apart and used for the following purposes only and in the  
9 following order:

10 1. So much thereof as may be necessary for such  
11 purpose is hereby appropriated to the purpose of acquiring and  
12 constructing mental health facilities in the state, and to  
13 that end shall be used by the State Treasurer to pay, at their  
14 respective maturities, the principal and interest that will  
15 mature during the then current fiscal year on whichever of the  
16 following may be issued:

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

20 (ii) Any bonds that may be issued by the Alabama  
21 Mental Health Finance Authority under the provisions of Acts  
22 1988, Act No. 88-475.

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

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

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

9           d. Six and six one-hundredths percent shall be set  
10 apart and used for the following purposes only and in the  
11 following order:

12           1. So much thereof as may be necessary for such  
13 purposes is hereby appropriated and shall be used by the State  
14 Treasurer to pay, at their respective maturities, the  
15 principal and interest that will mature during the then  
16 current fiscal year on all bonds that may be issued by the  
17 State Parks Development Authority under the provisions of Acts  
18 1967, No. 272, which provided for the creation of said  
19 authority and also provided for the submission of a  
20 constitutional amendment to authorize the issuance of general  
21 obligation bonds by said authority.

22           2. The balance thereafter remaining during each  
23 fiscal year shall be deposited into a special fund in the  
24 State Treasury to be designated the "State Parks Fund" and is  
25 hereby appropriated and shall be distributed as follows: Said  
26 fund may be expended by the State Director of Conservation at  
27 his discretion and with the approval of the Governor for

1 salaries, other expenses, land acquisitions, equipment  
2 purchases, capital additions or improvements, or other lawful  
3 expenses relating to the state division of parks, monuments,  
4 and historical sites.

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

7 (2) The remaining ~~61.18~~ 75 percent of the revenue  
8 derived from the tax levied on cigarettes by Sections 40-25-2  
9 and 40-25-41 shall be deposited into the State Treasury and  
10 allocated as follows:

11 a. Up to \$2 million received annually shall be  
12 allocated to the various counties of the state levying a  
13 cigarette tax to offset the administrative expenses of  
14 obtaining local stamps to affix to cigarettes sold in their  
15 jurisdiction for the purpose of collecting their local  
16 cigarette tax and to provide a discount to wholesalers and  
17 jobbers for affixing such stamps. These funds shall be  
18 distributed by the Comptroller pro rata based on the actual  
19 administrative expenses reported to the Comptroller by the  
20 counties at the conclusion of each quarter of the fiscal year.  
21 The Comptroller shall insure that such funds are distributed  
22 as soon as possible following the receipt of such reports.  
23 Failure of any county to submit such a report shall not  
24 prohibit the Comptroller from distributing funds to the  
25 remaining counties.

26 b. Remaining revenues to the General Fund to be used  
27 for Medicaid services.

1 (3) All of the revenue derived from the tax levied  
2 by Sections 40-25-2, 40-25-2.2 and 40-25-41 upon tobacco  
3 products other than cigarettes shall be deposited in the State  
4 Treasury to the credit of the State General Fund.

5 "§40-25-40.

6 For the purpose of this article, the following terms  
7 shall have the respective meanings ascribed to them in this  
8 section:

9 (1) PERSON. Any individual, firm, company,  
10 partnership, association, corporation, receiver or trustee, or  
11 any other group or combination acting as a unit, and the  
12 plural as well as the singular number.

13 (2) DEPARTMENT. The Department of Revenue of the  
14 State of Alabama.

15 (3) COMMISSIONER. The Commissioner of Revenue of the  
16 State of Alabama.

17 (4) STORAGE. Any keeping or retention in this state  
18 for any purpose except sale in the regular course of business  
19 or subsequent use solely outside this state of the commodities  
20 subject to the provisions of this article.

21 (5) USE. The exercise of any right or power over the  
22 commodities subject to the provisions of this article,  
23 incident to the ownership of those commodities or by any  
24 transaction where possession is given; except, that it shall  
25 not include the sale of those commodities in the regular  
26 course of business.

1 (6) IN THIS STATE. Within the exterior limits of the  
2 State of Alabama, and includes all territory within such  
3 limits owned by or ceded to the United States of America.

4 (7) TOBACCO PRODUCT. Cigars, cheroots, stogies,  
5 cigarettes, smoking tobacco, chewing tobacco, snuff, cigar  
6 wrappers or consumable vapor products, or tobacco in any form  
7 or condition or any substitute therefor.

8 (8) RETAIL SALE or SALE AT RETAIL. All sales except  
9 sales by wholesalers to licensed retail dealers or other  
10 wholesalers for resale.

11 (9) REGISTERED TAXPAYER. Any person who purchases  
12 tobacco products subject to the tax imposed by this article  
13 and who has been registered by the department as a responsible  
14 taxpayer.

15 "§40-25-41.

16 An excise tax is hereby imposed on the storage, use  
17 or other consumption in this state of tobacco products  
18 purchased at retail in an amount equal to that set out in  
19 Section 40-25-2, 40-25-2.2, 40-25-4 or to any additional  
20 amount or amounts of tobacco sales tax as may be otherwise  
21 levied or provided by law.

22 Every person storing, using, or otherwise consuming  
23 in this state tobacco products purchased at retail shall be  
24 liable for the tax imposed by this article, and the liability  
25 shall not be extinguished until the tax has been paid to this  
26 state; provided, that if said tobacco products have attached  
27 thereto the stamps provided in said Section 40-25-2,

1       40-25-2.2, 40-25-4 as aforesaid, or as otherwise provided by  
2       law, or if said tax imposed by said Section 40-25-2    
3       40-25-2.2, 40-25-4 as aforesaid, or to any additional amount  
4       or amounts of tobacco sales tax as may be otherwise levied or  
5       provided by law has been paid by the seller of such tobacco  
6       products, then the tax imposed by this article shall not be  
7       due. Every person who shall purchase tobacco products subject  
8       to the tax imposed by this article shall register with the  
9       Department of Revenue as a responsible taxpayer subject to the  
10      obligation of maintaining records and making returns, and  
11      shall furnish his name and address and the address at which  
12      tobacco products are received if that address is different  
13      from his permanent address and shall furnish such other  
14      information as the commissioner shall deem appropriate for the  
15      administration of this article.

16               All tobacco products subject to the tax imposed by  
17      this article and with respect to which the tax has not been  
18      paid are declared to be contraband and may be seized without  
19      warrant by the commissioner or his agents or employees or by  
20      any peace officer of this state, and confiscated as provided  
21      in Section 40-25-8, and in such case the tax shall become  
22      immediately due; except, that tobacco products in the  
23      possession of a registered taxpayer, as defined in this  
24      article, shall not be deemed contraband and subject to seizure  
25      and confiscation unless the time for making the report  
26      required by Section 40-25-42 has expired.

1           Every person subject to the tax imposed by this  
2 article who fails to register with the Department of Revenue  
3 as a responsible taxpayer; or every person owning or  
4 possessing tobacco products declared to be contraband under  
5 this section shall be deemed a violator of this article and  
6 may be required to pay a penalty of not less than \$25 nor more  
7 than \$500.

8           Section 2. § 40-25-2.2 is hereby added to Chapter  
9 25, Title 40, Code of Alabama 1975.

10           §40-25-2.2.

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

14           (1) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid  
15 solution or other material containing nicotine that is  
16 depleted as a vapor product is used.

17           (2) DEPARTMENT. The Department of Revenue of the  
18 State of Alabama.

19           (3) ELECTRONIC CIGARETTE. An electrical device that  
20 simulates the act of cigarette tobacco smoking by producing an  
21 inhaled vapor bearing the physical sensation, appearance, and  
22 often the flavor, of inhaled tobacco smoke.

23           (4) NET TAX PROCEEDS. The entire proceeds from the  
24 tax herein levied less costs of collection, refunds, grants,  
25 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) VAPOR PRODUCTS. Any non-lighted, noncombustible  
5 product that employs a mechanical heating element, battery, or  
6 electronic circuit regardless of shape or size and that can be  
7 used to produce vapor from nicotine in a solution. The term  
8 includes any vapor cartridge or other container of nicotine in  
9 a solution or other form that is intended to be used with or  
10 in an electronic cigarette, electronic cigar, electronic  
11 cigarillo, electronic pipe, or similar product or device. The  
12 term does not include any product regulated by the United  
13 States Food and Drug Administration under Chapter V of the  
14 Federal Food, Drug, and Cosmetic Act.

15           (b) In addition to all other taxes of every kind  
16 now imposed by law, every person, firm, corporation, club, or  
17 association, within the State of Alabama, who sells or stores  
18 or receives for the purpose of distribution to any person,  
19 firm, corporation, club, or association within the State of  
20 Alabama, vapor products shall pay to the State of Alabama for  
21 state purposes only an excise tax on consumable vapor products  
22 containing nicotine. There is hereby levied an excise tax on  
23 consumable vapor products at the rate of \$0.25 upon each fluid  
24 milliliter of consumable vapor product. This tax does not  
25 apply to the following:

26           (1) A vapor product sold outside the State.

27           (2) A vapor product sold to the federal government.



1           (c) In the instance where the product package  
2 contains the device and the vapor solution, the tax shall be  
3 calculated on as provided below in subsection (e).

4           (d) All consumable vapor products distributed as  
5 samples, gratis or for promotional reasons shall be subject to  
6 taxation.

7           (e) All invoices issued by the manufacturer,  
8 wholesaler and jobber must state the amount of consumable  
9 vapor product in milliliters. If the volume of consumable  
10 vapor product is not stated in milliliters, the tax on the  
11 consumable vapor product will be twenty five percent (25%) of  
12 the wholesale cost instead of \$.25 per milliliter of  
13 consumable vapor product.

14           (f) Before any person engages in the business of  
15 selling any consumable vapor products on which the tax levied  
16 by this section has not been paid to the department, the  
17 person shall make application to the department upon forms  
18 prepared by the department for a tobacco permit or  
19 registration as provided for in this Chapter. The permit or  
20 registration shall be a condition precedent to engaging or  
21 continuing in the business of selling the items taxed under  
22 this section.

23           (g) On or before the 20th day of each month, each  
24 person on whom the tax levied by this section is imposed shall  
25 render to the department on forms prescribed by the department  
26 a true and correct statement showing the amounts of tax due  
27 under this section for the previous month and all other

1 information as the department may require and shall pay to the  
2 department the amount of tax shown due.

3 (h) Any person subject to this section who shall  
4 fail to make any report required of them by the department or  
5 shall fail to keep any of the records required and the manner  
6 in which they are required in this Title shall be subject to  
7 the penalties subscribed in this Title. Each month of such  
8 failure shall constitute a separate offense.

9 (i) The tax imposed by this section shall be in  
10 addition to all other licenses and taxes levied by law as a  
11 condition precedent to engaging in any business taxable  
12 hereunder.

13 (j) All sales invoices from wholesalers, jobbers,  
14 and reseller in this state must state the tax separately for  
15 each consumable vapor product sold.

16 (k) Each operator of a retail store or outlet shall  
17 receive, examine and retain the purchase invoice from the  
18 source of the consumable vapor product for every purchase of  
19 consumable vapor products for a period of 90 days at the  
20 retail location. At the end of 90 days, the purchase records  
21 shall be maintained with the required books a records for a  
22 period of three years from the date of purchase. Any person,  
23 firm, corporation, club, or association of persons who fails  
24 or refuses to keep and preserve the records as herein  
25 required, or upon request by a duly authorized agent of the  
26 Department of Revenue fails or refuses to all an audit or  
27 inspection of the records hereinabove provided may result in a

1 department imposed penalty of not less than five hundred  
2 dollars (\$500) nor more than one thousand dollars (\$1,000).  
3 This penalty is multiplied by the number of violations of this  
4 subsection.

5 (l) Any taxpayer who shall violate this Chapter may  
6 be restrained from continuing in business, and the proper  
7 prosecution shall be instituted in the name of the State of  
8 Alabama by its Attorney General or by the counsel of the  
9 department until such person shall have complied with this  
10 section.

11 (m) The department shall enforce this section and  
12 may prescribe, adopt, promulgate, and enforce rules relating  
13 to any matter or thing pertaining to the administration and  
14 enforcement of this section and the collection of taxes,  
15 penalties, interest, confiscation process, record keeping, and  
16 maintaining and providing invoices as subscribed in this  
17 Chapter.

18 (n) The monthly reporting of this product shall also  
19 be subject to the provisions of 40-25-16.1.

20 (o) All revenue collected under the provisions of  
21 this section on consumable vapor products shall be paid to the  
22 department and shall be distributed to the State General Fund.

23 (p) The amount of money as shall be appropriated for  
24 each fiscal year by the Legislature to the department with  
25 which to pay the salaries and the cost of operation and  
26 management of the department shall be deducted, as a first  
27 charge thereon, from the taxes collected under the provisions

1 of this section; provided, however, that the expenditure of  
2 such sum so appropriated shall be budgeted and allotted  
3 pursuant to Sections 41-4-80 to 41-4-96, inclusive, and  
4 limited to the amount appropriated to defray the expenses of  
5 operating the department for each fiscal year.

6 Section 3. A new Chapter 37 is hereby added to Title  
7 8, Code of Alabama, 1975, as follows:

8 8-37-1.

9 This chapter shall be known and may be cited as  
10 the "Unfair Retailer's Cigarette Sales Law."

11 8-37-2.

12 As used in this chapter, unless the context  
13 otherwise requires:

14 (1) "Basic cost of cigarettes" means the invoice  
15 cost of cigarettes to the retailer or the replacement cost of  
16 cigarettes to the retailer within thirty (30) days prior to  
17 the date of sale, in the quantity last purchased, whichever is  
18 lower, absent any cash or other discounts and/or concessions  
19 of any kind, to which shall be added the full face value of  
20 any stamps which may be required by any cigarette tax law of  
21 this state and any local taxing jurisdiction now in effect or  
22 hereafter enacted, and any other taxes or fees imposed by  
23 Title 40 , chapter 25, if not already included by the  
24 manufacturer in this list price;

25 (2) "Attorney General" means the Attorney General of  
26 Alabama;

1           (3) "Cost of doing business by the retailer" is  
2 fifteen percent (15%) of the basic cost of cigarettes to the  
3 retailer;

4           (4) "Cost to the retailer" means the "basic cost of  
5 cigarettes" to the retailer plus the "cost of doing business  
6 by the retailer;"

7           (5) "Retailer" has the same meaning ascribed to the  
8 words "retail dealer" in Section 40-25-1;

9           (6) "Sell at retail," "sales at retail" or "retail  
10 sales" means and includes any transfer of title to tangible  
11 personal property for a valuable consideration made in the  
12 ordinary course of trade or usual prosecution of the seller's  
13 business, to the purchaser for consumption or use; and

14           (7) "Wholesale dealer" or "jobber" has the same  
15 meaning as ascribed in Code Section 40-25-1.

16           8-37-3.

17           (a) It is a Class C misdemeanor for any retailer,  
18 with intent to injure competitors or destroy substantially or  
19 lessen competition, to advertise, offer to sell, or sell at  
20 retail, cigarettes at less than cost to the retailer.

21           (b) Evidence of advertisement, offering to sell or  
22 sale of cigarettes by any retailer at less than cost to the  
23 retailer shall be prima facie evidence of both a violation of  
24 the Unfair Retailer's Cigarette Sales Law, compiled in this  
25 chapter, and of intent to injure competitors or destroy  
26 substantially or lessen competition.

27           8-37-4.

1           Any individual who, as a director, officer, partner,  
2 member, or agent of any person violating this chapter, assists  
3 or aids, directly or indirectly, in such violation, equally  
4 with the person for whom such individual acts, commits a Class  
5 C misdemeanor.

6           8-37-5.

7           Any contract, express or implied, made by any  
8 person, firm, or corporation in violation of any of the  
9 provisions of this chapter is declared to be an illegal and  
10 void contract and no recovery thereon shall be had.

11          8-37-6.

12          In all advertisements, offers for sale, or sales  
13 involving two (2) or more items, at least one (1) of which  
14 items is cigarettes, at a combined price, and in all  
15 advertisements, offers for sale, or sales involving the giving  
16 of any concession of any kind whatsoever (whether coupons or  
17 otherwise), the retailer's selling price shall not be below  
18 the cost to the retailer of all articles, products,  
19 commodities, and concessions included in such transactions.

20          8-37-7.

21          This chapter does not apply to sales at retail made  
22 where cigarettes are:

23           (1) Advertised, offered for sale, or sold in bona  
24 fide clearance sales for the purpose of discontinuing trade in  
25 such cigarettes and the advertising, offer to sell, or sale  
26 shall state the reason thereof and the quantity of such  
27 cigarettes advertised, offered for sale, or to be sold;

1           (2) Advertised, offered for sale, or sold as  
2 imperfect or damaged and the advertising, offer to sell, or  
3 sale shall state the reason thereof and the quantity of such  
4 cigarettes advertised, offered for sale, or to be sold;

5           (3) Sold upon the complete final liquidation of a  
6 business; or

7           (4) Advertised, offered for sale, or sold by any  
8 fiduciary or other officer acting under the order or direction  
9 of any court.

10           8-37-8.

11           Participation in a manufacturer's incentive program,  
12 discount price program or special price program shall not  
13 cause a retailer to be in violation of this chapter.

14           8-37-9.

15           (a) Any person injured by any violation, or who  
16 would suffer injury from any threatened violation, of this  
17 chapter may maintain an action in any court of equity  
18 jurisdiction to prevent, restrain, or enjoin such violation or  
19 threatened violation. If in such action a violation or  
20 threatened violation of this chapter shall be established, the  
21 court shall enjoin and restrain, or otherwise prohibit, such  
22 violation or threatened violation and, in addition thereto,  
23 the court shall assess in favor of the plaintiff and against  
24 the defendant the costs of suit, including reasonable  
25 attorney's fees. In such action it shall not be necessary that  
26 actual damages to the plaintiff be alleged or proved, but  
27 where alleged and proved, the plaintiff in said action, in

1 addition to such injunctive relief and cost of suit, including  
2 reasonable attorney's fees, shall be entitled to recover from  
3 the defendant the damages sustained by him.

4 (b) A person injured as a result of an act or  
5 practice which violates this chapter may bring a civil action  
6 for appropriate relief, including an action for a declaratory  
7 judgment, injunctive relief, and for actual damages. Any  
8 actual damages found to have resulted from violations of this  
9 chapter shall be trebled by the court in making its award. Any  
10 action under this subsection shall be brought within two years  
11 after the alleged violations occurred.

12 (c) The court, in making an award under subsection  
13 (b) of this section, may award court costs and reasonable  
14 attorney's fees to the prevailing party.

15 (d) The courts of this state are empowered with  
16 jurisdiction to hear and determine all cases brought under  
17 this section. Venue lies in any county where the defendant or  
18 any of them resides or does business or where the cause of  
19 action accrues.

20 8-37-10

21 (a) Any person who violates this chapter shall be  
22 subject to a civil penalty not to exceed ten thousand dollars  
23 (\$10,000) per violation for each offense. Any such person  
24 shall also be liable for attorney fees and shall be subject to  
25 injunctive relief. Each day that a violation of this chapter  
26 occurs shall be considered as a separate violation.



1           (b) The penalty may be assessed and recovered in a  
2 civil action brought by the Attorney General, or by any  
3 district attorney in any court of competent jurisdiction. If  
4 brought by a district attorney, 30 percent of the penalty  
5 shall be paid to the office of the district attorney which  
6 brought the action and 70 percent of the penalty shall be paid  
7 to the treasury of the county in which the judgment was  
8 entered. If brought by the Attorney General, one-half of the  
9 penalty shall be paid to the treasury of the county where the  
10 action was brought and one-half shall be paid to the State  
11 Treasury.

12           Section 4. All laws or parts of laws which conflict  
13 with this act are repealed.

14           Section 5. Sections 1, 3 and 4 of this act shall  
15 become effective September 1, 2015, following its passage and  
16 approval by the Governor, or its otherwise becoming law.  
17 Section 2 of this act shall become effective on July 1, 2016,  
18 following its passage and approval by the Governor, or its  
19 otherwise becoming law.