

1 HB712
2 141034-1
3 By Representative Hubbard (J)
4 RFD: Ways and Means General Fund
5 First Read: 19-APR-12

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8 SYNOPSIS: Currently, the State of Alabama levies a tax
9 on various tobacco products.

10 This bill would add a \$1 user fee on a pack
11 of cigarettes and provide for its distribution.

12 This bill would be known as the Medicaid
13 Paygo Act of 2012.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Section 40-25-2, Code of Alabama 1975,
20 relating to the state tax on tobacco products; to create the
21 Medicaid Paygo Act of 2012; and to add a user fee on
22 cigarettes and provide for its distribution.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited
25 as the Medicaid Paygo Act of 2012

26 Section 2. Section 40-25-2, Code of Alabama 1975, is
27 amended to read as follows:

1 "§40-25-2.

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

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

20 "(2) CHEROOTS, STOGIES, CIGARS, ETC. Upon cigars of
21 all descriptions made of tobacco, or any substitute therefor,
22 retailing for three and one-third cents each or less, \$3 per
23 1,000.

24 "(3) CIGARS. Upon cigars of all descriptions made of
25 tobacco, or any substitute therefor, retailing for more than
26 three and one-third cents each and not more than \$.05 each, \$6
27 per 1,000.

1 "(4) CIGARS. Upon cigars of all descriptions made of
2 tobacco, or any substitute therefor, retailing for more than
3 \$.05 each and not exceeding \$.08 each, \$9 per 1,000.

4 "(5) CIGARS. Upon cigars of all descriptions made of
5 tobacco, or any substitute therefor, retailing for more than
6 \$.08 each and not exceeding \$.10 each, \$15 per 1,000.

7 "(6) CIGARS. Upon cigars of all descriptions made of
8 tobacco, or any substitute therefor, retailing for more than
9 \$.10 each and not exceeding \$.20 each, \$30 per 1,000.

10 "(7) CIGARS. Upon cigars of all descriptions made of
11 tobacco, or any substitute therefor, retailing for more than
12 \$.20 each, \$40.50 per 1,000.

13 "(8) CIGARETTES. a. Upon all cigarettes made of
14 tobacco, or any substitute therefor, 21.25 mills on each such
15 cigarette.

16 "b. In addition to the amount provided in paragraph
17 a., a user fee of 50 mills is assessed on cigarettes made of
18 tobacco or any substitute for tobacco.

19 "(9) SMOKING TOBACCO. Upon all smoking tobacco,
20 including granulated, plug cut, crimp cut, ready rubbed and
21 other kinds and forms of tobacco prepared in such manner as to
22 be suitable for smoking in a pipe or cigarette, upon each
23 package: weighing not more than one and one-eighth ounces, tax
24 \$.04; over one and one-eighth ounces, not exceeding two
25 ounces, tax \$.10; over two ounces, not exceeding three ounces,
26 tax \$.16; over three ounces, not exceeding four ounces, tax

1 \$.21; \$.06 additional tax for each ounce or fractional part
2 thereof over four ounces.

3 "(10) CHEWING TOBACCO. Upon all chewing tobacco
4 prepared in such manner as to be suitable for chewing only and
5 not suitable for smoking as described and taxed in subdivision
6 (9) of this subsection: \$.015 per ounce or fractional part
7 thereof.

8 "(11) SNUFF. Upon each can or package of snuff
9 weighing not more than five-eighths ounces, one cent tax; over
10 five-eighths ounces and not exceeding one and five-eighths
11 ounces, \$.02 tax; over one and five-eighths ounces and not
12 exceeding two and one-half ounces, \$.04 tax; over two and
13 one-half ounces and not exceeding five ounces (cans, packages,
14 gullets), \$.06 tax; over three ounces and not exceeding five
15 ounces (glasses, tumblers, bottles), seven cents tax; over
16 five ounces and not exceeding six ounces, \$.08 tax; weighing
17 over six ounces, an additional \$.12 for each ounce or
18 fractional part thereof.

19 "(b) Whenever in this article reference is made to
20 any manufactured tobacco products, manufactured or imported to
21 sell at a certain price, as the basis for computing the tax,
22 it is intended to mean the ordinary, customary or usual price
23 paid by the consumer for such tobacco products taxable under
24 this article.

25 "(c) Whenever in this article reference is made to
26 any manufactured tobacco products on which the tax is based on

1 weight, the weight as shown by the manufacturer or the federal
2 internal revenue stamp shall apply.

3 "(d) When the retail or selling price is referred to
4 in this article as the basis for computing the amount of
5 stamps required on any article, it is intended to mean the
6 retail or selling price of the articles before adding the
7 amount of the tax.

8 "(e) When any articles or commodities subject to tax
9 in this article are given as prizes on punch boards, shooting
10 galleries, premiums, etc., the tax shall be based on the
11 ordinary retail selling price of such articles.

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

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

25 "(g) The Commissioner of Revenue shall prepare and
26 issue stamps in denominations for the amount of the tax
27 imposed by this article provided that if the commissioner

1 determines that it is not economical for the state to have a
2 stamp prepared and issued for one or more particular types of
3 packages of tobacco products, then he may by regulation
4 prescribe the use of a stamp in a denomination other than for
5 the amount of the tax imposed with the difference between the
6 amount of tax actually imposed and the amount of tax
7 denominated by the stamp paid with the use of a monthly
8 report; or he may require a monthly report without use of a
9 stamp to report the amount of taxes due.

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

21 "(i) Local taxes and/or license fees, county or
22 municipal, imposed on the sale or use of cigarettes shall be
23 paid to the local government through the use of stamps affixed
24 to the product as provided herein for the state tax. Provided,
25 however, this requirement shall not be interpreted to require
26 the Department of Revenue to prepare all stamps or to collect
27 all local taxes. Local governments may contract with another

1 entity to collect their local cigarette tax but all local
2 taxes must be collected as provided herein."

3 Section 3. Notwithstanding any other provision of
4 Chapter 25, Title 40, Code of Alabama 1975, all revenue
5 received from the 50 mill user fee added by this amendatory
6 act shall be deposited into the State General Fund and is
7 hereby allocated to the Medicaid Program.

8 Section 4. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.