

1 HB725
2 141303-1
3 By Representatives Todd, McClurkin, Ison, Drake, England,
4 Hubbard (J), Melton, Brown, Beech and Warren
5 RFD: Ways and Means General Fund
6 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 one dollar (\$1) user
11 fee on a pack of cigarettes.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 To amend Section 40-25-2, Code of Alabama 1975,
18 relating to the state tax on tobacco products; to add a user
19 fee on cigarettes.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 40-25-2, Code of Alabama 1975, is
22 amended to read as follows:

23 "§40-25-2.

24 "(a) In addition to all other taxes of every kind
25 now imposed by law, every person, firm, corporation, club, or
26 association, within the State of Alabama, who sells or stores
27 or receives for the purpose of distribution to any person,

1 firm, corporation, club, or association within the State of
2 Alabama, cigars, cheroots, stogies, cigarettes, smoking
3 tobacco, chewing tobacco, snuff, or any substitute therefor,
4 either or all, shall pay to the State of Alabama for state
5 purposes only a license or privilege tax which shall be
6 measured by and graduated in accordance with the volume of
7 sales of such person, firm, corporation, club, or association
8 in Alabama. There is hereby levied license or privilege taxes
9 on articles containing tobacco enumerated in this article in
10 the following amounts:

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

15 "(2) CHEROOTS, STOGIES, CIGARS, ETC. Upon cigars of
16 all descriptions made of tobacco, or any substitute therefor,
17 retailing for three and one-third cents each or less, \$3 per
18 1,000.

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

23 "(4) CIGARS. Upon cigars of all descriptions made of
24 tobacco, or any substitute therefor, retailing for more than
25 \$.05 each and not exceeding \$.08 each, \$9 per 1,000.

1 "(5) CIGARS. Upon cigars of all descriptions made of
2 tobacco, or any substitute therefor, retailing for more than
3 \$.08 each and not exceeding \$.10 each, \$15 per 1,000.

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

7 "(7) CIGARS. Upon cigars of all descriptions made of
8 tobacco, or any substitute therefor, retailing for more than
9 \$.20 each, \$40.50 per 1,000.

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

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

16 "(9) SMOKING TOBACCO. Upon all smoking tobacco,
17 including granulated, plug cut, crimp cut, ready rubbed, and
18 other kinds and forms of tobacco prepared in such manner as to
19 be suitable for smoking in a pipe or cigarette, upon each
20 package: weighing not more than one and one-eighth ounces, tax
21 \$.04; over one and one-eighth ounces, not exceeding two
22 ounces, tax \$.10; over two ounces, not exceeding three ounces,
23 tax \$.16; over three ounces, not exceeding four ounces, tax
24 \$.21; \$.06 additional tax for each ounce or fractional part
25 thereof over four ounces.

26 "(10) CHEWING TOBACCO. Upon all chewing tobacco
27 prepared in such manner as to be suitable for chewing only and

1 not suitable for smoking as described and taxed in subdivision
2 (9) of this subsection: \$.015 per ounce or fractional part
3 thereof.

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

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

21 "(c) Whenever in this article reference is made to
22 any manufactured tobacco products on which the tax is based on
23 weight, the weight as shown by the manufacturer or the federal
24 internal revenue stamp shall apply.

25 "(d) When the retail or selling price is referred to
26 in this article as the basis for computing the amount of
27 stamps required on any article, it is intended to mean the

1 retail or selling price of the articles before adding the
2 amount of the tax.

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

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

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

20 "(g) The Commissioner of Revenue shall prepare and
21 issue stamps in denominations for the amount of the tax
22 imposed by this article provided that if the commissioner
23 determines that it is not economical for the state to have a
24 stamp prepared and issued for one or more particular types of
25 packages of tobacco products, then he may by regulation
26 prescribe the use of a stamp in a denomination other than for
27 the amount of the tax imposed with the difference between the

1 amount of tax actually imposed and the amount of tax
2 denominated by the stamp paid with the use of a monthly
3 report; or he may require a monthly report without use of a
4 stamp to report the amount of taxes due.

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

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

25 Section 2. Notwithstanding any other provision of
26 Chapter 25, Title 40, Code of Alabama 1975, all revenue

1 received from the 50 mill user fee added by this amendatory
2 act shall be deposited into the State General Fund.

3 Section 3. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.