

1 SB130
2 173058-1
3 By Senator Sanford
4 RFD: Finance and Taxation Education
5 First Read: 03-FEB-16

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8 SYNOPSIS: This bill would amend Sections 27-4A-3,
9 40-23-61 and 40-23-174, Code of Alabama 1975, and
10 would also amend Section 40-23-85 of the Code of
11 Alabama 1975, as last amended by Act 2015-539 of
12 the 2015 Second Special Session, to provide further
13 for the distribution of use tax and insurance
14 premium tax funds.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 To amend Sections 27-4A-3, 40-23-61 and 40-23-174,
21 Code of Alabama 1975; and to amend Section 40-23-85 of the
22 Code of Alabama 1975, as last amended by Act 2015-539 of the
23 2015 Second Special Session, relating to use tax; to provide
24 further for the distribution of use tax and insurance premium
25 tax funds; and to provide that the changes made in tax
26 distributions in this act shall not be considered in

1 calculating the Education Trust Fund fiscal year appropriation
2 cap for fiscal year 2017.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 27-4A-3, 40-23-61, and
5 40-23-174, Code of Alabama 1975, are amended to read as
6 follows:

7 "§27-4A-3.

8 (a) Subject to the exceptions and exemptions
9 hereinafter set forth, for the year beginning on January 1,
10 1995, and for each year thereafter, every insurer shall pay to
11 the commissioner a premium tax equal to the percentage, as set
12 out in this subsection (a), of the premiums received by the
13 insurer for business done in this state, whether the same was
14 actually received by the insurer in this state or elsewhere:

15 (1) PREMIUM TAX ON LIFE INSURANCE PREMIUMS.

16 a. Except as hereinafter provided, the rates of tax-
17 ation on life insurance premiums shall be those amounts set
18 out in the following schedule:

19	Year	Foreign Insurers	Domestic Insurers
20	1995	2.9	1.3
21	1996	2.8	1.6
22	1997	2.7	1.8
23	1998	2.5	2.1
24	Every Year Thereafter	2.3	2.3

1 b. Individual life insurance policies in a face
2 amount of greater than \$5,000 and up to and including \$25,000,
3 excluding group life insurance policies, shall be taxed at the
4 rate of one percent per annum.

5 c. Individual life insurance policies in a face
6 amount of \$5,000 or less, excluding group life insurance
7 policies, shall be taxed at the rate of one-half percent per
8 annum.

9 d. For the purposes of computing the face amount of
10 life insurance policies, all life insurance policies issued
11 within 60 days of another on the life of the same applicant or
12 applicants shall be treated as one policy.

13 (2) PREMIUM TAX ON HEALTH INSURANCE PREMIUMS.

14 a. Except as hereinafter provided, the rates of tax-
15 ation on premiums for health insurance, and accident and
16 health insurance for which a separate premium is charged,
17 shall be those amounts set out in the following schedule:

18	Year	Foreign Insurers	Domestic Insurers
19	1995	2.9	1.3
20	1996	2.8	1.6
21	1997	2.4	1.6
22	1998	2.0	1.6
23	Every Year Thereafter	1.6	1.6

1 b. Premiums for hospital, medical, surgical, or
2 other health care benefits provided pursuant to any
3 employer-sponsored plan for groups with less than 50 insured
4 participants shall be taxed at the rate of one-half percent
5 per annum.

6 c. Premiums for hospital, medical, surgical, or
7 other health care benefits supplementary to Medicare and
8 Medicaid, or provided pursuant to an employer-sponsored plan
9 for governmental employees, shall be exempt from the premium
10 tax levied pursuant to this chapter.

11 (3) PREMIUM TAX ON OTHER INSURANCE PREMIUMS.

12 a. Except as hereinafter provided, the rate of
13 taxation on insurance other than life insurance, health
14 insurance, and accident health insurance shall be 3.6 percent
15 per annum.

16 b. Premiums for all of the following types of
17 insurance shall be taxed at the rate of one percent per annum:

18 1. All property and multi-peril insurance written in
19 fire protection Classes 9 and 10.

20 2. Mobile homes, mobile homeowners, homeowners and
21 low value dwelling policies in a face amount of \$40,000 or
22 less.

23 c. Premiums for medical liability insurance shall be
24 taxed at the rate of 1.6 percent per annum.

25 d. The tax imposed at the rate specified in
26 paragraph a. of this subdivision (3) shall be reduced by the

1 following credits for certain economic development activities
2 pursued in the State of Alabama.

3 1. Alabama Insurance Offices Facilities Credit. For
4 each office owned or leased by an insurer in the State of Ala-
5 bama and used for insurance operations, an insurer shall be
6 entitled to a credit against the tax imposed by paragraph a.
7 of this subdivision (3) according to the following schedule:

8	Number of Full-Time Employees in	Credit as a % of Premiums Taxable
9	Office	Under Paragraph a.
10	1-3	0.0025%
11	4-10	0.0050%
12	11-50	0.0075%
13	51 or more	0.0100%

14 The total credit allowable for Alabama insurance
15 office facilities shall not exceed one percent of an insurer's
16 Alabama premiums taxable at the rate specified in paragraph a.
17 of this subdivision (3).

18 2. Alabama Real Property Investment Credit. For each
19 \$1,000,000 in value of real property investments in the State
20 of Alabama, an insurer shall be entitled to a credit of 0.10
21 percent of its Alabama premiums taxable at the rate specified
22 in paragraph a. of this subdivision (3). The total credit
23 allowable for Alabama real property investments shall not

1 exceed 1 percent of an insurer's Alabama premiums taxable at
2 the rate specified in paragraph a. of this subdivision (3).

3 (i) Alabama real property investments which qualify
4 for the Alabama real property investment credit include any
5 improved Alabama real property owned by the insurer or an
6 affiliate of the insurer on January 1, 1993, and any improved
7 or unimproved Alabama real property acquired or new
8 construction placed in service on or after January 1, 1993, by
9 the insurer or an affiliate of the insurer.

10 (ii) For purposes of determining the Alabama real
11 property investment credit, Alabama real property investments
12 shall be valued at cost and not at book value or fair market
13 value. The cost of capital improvements to existing Alabama
14 real property investments, such as the renovation of shopping
15 centers, hotels, or other buildings, completed and placed in
16 service by the insurer or an affiliate of the insurer on or
17 after January 1, 1993, shall be considered an Alabama real
18 estate investment.

19 (iii) For purposes of determining the value of
20 Alabama real property investments, funds borrowed to finance
21 Alabama real property investments shall be subtracted from
22 cost so that only the net cost in the investment properties
23 borne from assets belonging to the insurer or an affiliate of
24 the insurer qualifies for the Alabama real property investment
25 credit. The cost of debt-financed Alabama real property
26 investments of an insurer shall be increased pro tanto as the

1 underlying debt is paid off by the insurer or an affiliate of
2 the insurer.

3 (iv) The Alabama real property investment credit
4 shall not be allowed for properties in the State of Alabama
5 used in an insurer's insurance operations and for which the
6 Alabama insurance office facilities credit is allowed or
7 allowable, without regard to the 1 percent limitation on the
8 credit. However, the cost of real property owned in the State
9 of Alabama and used in part as an Alabama real property
10 investment and in part for the insurer's insurance operations
11 shall be allocated on a square-foot basis so that the cost
12 allocated to that portion of the property not used for
13 insurance operations shall qualify for the Alabama real
14 property investment credit.

15 (v) Mortgages held by an insurer that are secured by
16 real property located in the State of Alabama shall not be
17 considered Alabama real property investments for purposes of
18 the Alabama real property investment credit.

19 3. Special Rules. The following special rules apply
20 to the Alabama insurance office facilities credit and the
21 Alabama real property investment credit.

22 (i) For purposes of determining the economic
23 development credits allowed under this section, the term
24 "affiliate" shall mean any business entity, other than a life
25 or health insurance company, which is wholly owned by the
26 insurer subject to tax under paragraph a. of this subdivision
27 (3) or any other insurer and its wholly owned subsidiaries,

1 other than a life or health insurance company, which is part
2 of a group of companies, including the insurer, which are
3 under common control and management. For an insurer having
4 affiliates, all premiums of the insurer and its insurance
5 company affiliates subject to tax at the rate specified in
6 paragraph a. of this subdivision (3) may be aggregated; all
7 Alabama insurance office facilities and all Alabama real
8 property investments may be aggregated; and, subject to the
9 specific credit limitations, the total allowable tax credits
10 may be determined as if all the aggregated premiums, office
11 facilities, and Alabama real property investments were owned
12 by one insurer. Once the total allowable credits have been
13 determined, the credits may be allocated to the insurer and
14 its insurance company affiliates at the sole discretion of the
15 insurer subject to the specific credit limitations on a per
16 insurance company basis. The computation of allowable credits
17 and their allocation to affiliates shall be made on forms to
18 be supplied by the Alabama Department of Insurance, which
19 forms shall be filed with the insurer's annual statement.

20 (b) Notwithstanding any provision of law to the
21 contrary, including, but not limited to, Section 27-4-4 and
22 Section 27-4-5, all premium tax payments made subsequent to
23 passage of this chapter shall be remitted in accordance with
24 this subsection (b). Beginning January 1, 1993, and all years
25 thereafter, each insurer shall pay its premium taxes on a
26 quarterly basis, as follows: on or before May 15, a payment
27 estimated on the basis of 25 percent of its business done in

1 this state during the preceding calendar year or, at the
2 option of the insurer, on the basis of its actual business
3 done in the state from January 1 through March 31 of the same
4 calendar year; on or before August 15, a payment estimated on
5 the basis of 45 percent of its business done in this state
6 during the preceding calendar year or, at the option of the
7 insurer, on the basis of 180 percent of its actual business
8 done in this state from April 1 through June 30 of the same
9 calendar year; on or before November 15, a payment estimated
10 on the basis of 25 percent of its business done in this state
11 during the preceding calendar year or, at the option of the
12 insurer, on the basis of its actual business done in this
13 state from July 1 through September 30 of the same calendar
14 year; on or before March 1, a payment in the amount of the
15 remainder of the actual premium taxes due on its business done
16 in the state during the preceding calendar year. Every
17 authorized insurer shall file with the commissioner a
18 statement, on a form as furnished or approved by the
19 commissioner, setting forth the total amount of premiums
20 received by it for business done in this state during the
21 period covered by the tax payment. The statement shall be
22 verified by an affidavit of an officer of the insurer having
23 knowledge of the facts. It is the intent and meaning of this
24 subsection (b) that any taxes paid on an estimated quarterly
25 basis during the calendar year shall be reconciled to actual
26 premiums received on risks in this state for such calendar

1 year on the March 1 payment date in the succeeding calendar
2 year.

3 (c) The tax imposed by this section shall be subject
4 to credit and deduction of the full amount, with 25 percent of
5 the full amount paid, or estimated to be paid, being credited
6 or deducted on each quarterly payment date, for all of the
7 following:

8 (1) Ad valorem property taxes paid by an insurer on
9 any building and real estate in this state which is owned and
10 occupied, in whole or in part, by the insurer for the full
11 period of the tax year as its principal office in the State of
12 Alabama.

13 (2) All ad valorem taxes paid by an insurer during
14 the calendar year on any other real estate and improvements
15 thereon in this state which is owned and at least 50 percent
16 occupied by the insurer for the full period of the tax year.

17 (3) Ad valorem property taxes paid by an insurer on
18 the insurer's offices in this state during the calendar year,
19 but with respect to the office apportioned to the square foot
20 area occupied by the insured, whether the ad valorem taxes are
21 paid directly by the insurer or in the form of rent to a
22 third-party landlord.

23 (4) All license fees and taxes paid to any county in
24 this state during the calendar year for the privilege of
25 engaging in the business of insurance within the county.

26 (5) All expenses of examination of the insurer by
27 the commissioner paid during the calendar year.

1 (6) Sixty percent of the franchise or privilege
2 taxes paid by the insurer to the State of Alabama for the
3 calendar year.

4 (7) All credits for assessments as provided under
5 Sections 27-42-16 and 27-44-13, or assessments for any
6 insurance guaranty fund or pool now or hereafter created by
7 statute paid during the calendar year.

8 (8) It is the intent of this subsection (c) that any
9 estimated allowable credits or deductions claimed on quarterly
10 returns be reconciled to actual expenditures made during the
11 calendar year on the return due for March 1 in the succeeding
12 calendar year.

13 (d) The premium taxes collected under this section
14 shall be deposited in the State Treasury and credited as
15 follows:

16 (1) To the credit of the State General Fund:

17 a. One hundred percent of the premium tax paid by
18 all health maintenance organizations, domestic and foreign.

19 b. ~~Fifty~~ One hundred percent of the premium tax paid
20 by domestic life insurers.

21 c. No part of the premium tax paid by nonprofit
22 corporations organized pursuant to the provisions of Sections
23 10-4-100 to 10-4-115, inclusive.

24 d. ~~Twenty-five~~ One hundred percent of the premium
25 tax paid by all other domestic insurers.

26 e. One hundred percent of the premium tax paid by
27 foreign life insurers.

1 f. ~~Sixty-two and one-half~~ One hundred percent of the
2 premium tax paid by all foreign property insurers.

3 g. ~~Seventy-five~~ One hundred percent of the premium
4 tax paid by all other foreign insurers.

5 (2) To the credit of the Education Trust Fund: no
6 part of the premium tax paid by nonprofit corporations
7 organized pursuant to the provisions of Sections 10-4-100 to
8 10-4-115, inclusive.

9 a. ~~Fifty percent of the premium tax paid by domestic~~
10 ~~life insurers.~~

11 b. ~~No part of the premium tax paid by nonprofit~~
12 ~~corporations organized pursuant to the provisions of Sections~~
13 ~~10-4-100 to 10-4-115, inclusive.~~

14 c. ~~Seventy-five percent of the premium tax paid by~~
15 ~~all other domestic insurers.~~

16 d. ~~Thirty-seven and one-half percent of the premium~~
17 ~~tax paid by foreign property insurers.~~

18 e. ~~Twenty-five percent of the premium tax paid by~~
19 ~~all other foreign insurers.~~

20 (3) To the credit of the Alabama Special Mental
21 Health Trust Fund 100 percent of the premium taxes paid by
22 nonprofit corporations organized pursuant to Sections 10-4-100
23 to 10-4-115, inclusive.

24 (4) Any provision of this subsection (d) to the
25 contrary notwithstanding, the amount credited to the ~~Education~~
26 ~~Trust Fund and the~~ Alabama Special Mental Health Trust Fund
27 for any fiscal year after the fiscal year ending September 30,

1 1992, under this subsection (d) shall be limited to no more
2 than the amount so credited in the fiscal year ending
3 September 30, 1992. Any premium tax that would have been
4 credited to the ~~Education Trust Fund or the~~ Alabama Special
5 Mental Health Trust Fund but for this limitation, shall be
6 credited to the State General Fund.

7 (e) For the purposes of this section, the term
8 "insurer" shall not include counties, municipalities,
9 municipal corporations, political subdivisions of the state,
10 instrumentalities of counties, municipalities, municipal
11 corporations, or the State of Alabama, or corporations or
12 associations owned solely by counties, municipalities or the
13 State of Alabama.

14 "§40-23-61.

15 (a) An excise tax is hereby imposed on the storage,
16 use or other consumption in this state of tangible personal
17 property, not including, however, materials and supplies
18 bought for use in fulfilling a contract for the painting,
19 repairing or reconditioning of vessels, barges, ships, other
20 watercraft and commercial fishing vessels of over five tons
21 load displacement as registered with the U.S. Coast Guard and
22 licensed by the State of Alabama Department of Conservation
23 and Natural Resources, purchased at retail on or after October
24 1, 1965, for storage, use or other consumption in this state
25 at the rate of four percent of the sales price of such
26 property or the amount of tax collected by the seller,
27 whichever is greater; provided, however, when the seller

1 follows the Department of Revenue's suggested use tax brackets
2 and his records prove that his following said brackets
3 resulted in a net undercollection of tax for the month, he may
4 report the tax due or tax collected, whichever is less, except
5 as provided in subsections (b) and (c) of this section.

6 (b) An excise tax is hereby imposed on the storage,
7 use or other consumption in this state of any machines used in
8 mining, quarrying, compounding, processing and manufacturing
9 of tangible personal property, purchased at retail on or after
10 October 1, 1965, at the rate of one and one-half percent of
11 the sales price of any such machine or the amount of tax
12 collected by the seller, whichever is greater; provided,
13 however, when the seller follows the Department of Revenue's
14 suggested use tax brackets and his records prove that his
15 following said brackets resulted in a net undercollection of
16 tax for the month, he may report the tax due or tax collected,
17 whichever is less; provided, that the term "machine," as
18 herein used, shall include machinery which is used for mining,
19 quarrying, compounding, processing, or manufacturing tangible
20 personal property, and the parts of such machines, attachments
21 and replacements therefor, which are made or manufactured for
22 use on or in the operation of such machines and which are
23 necessary to the operation of such machines and are
24 customarily so used.

25 (c) An excise tax is hereby imposed on the storage,
26 use or other consumption in this state of any automotive
27 vehicle or truck trailer, semitrailer or house trailer, and

1 mobile home set-up materials and supplies including but not
2 limited to steps, blocks, anchoring, cable pipes and any other
3 materials pertaining thereto, purchased at retail on or after
4 October 1, 1965, for storage, use or other consumption in this
5 state at the rate of two percent of the sales price of such
6 automotive vehicle, truck trailer, semitrailer or house
7 trailer, and mobile home set-up materials and supplies as
8 specified above, or the amount of tax collected by the seller,
9 whichever is greater; provided, however, when the seller
10 follows the Department of Revenue's suggested use tax brackets
11 and his records prove that his following said brackets
12 resulted in a net undercollection of tax for the month, he may
13 report the tax due or tax collected, whichever is less. Where
14 any used automotive vehicle or truck trailer, semitrailer or
15 house trailer is taken in trade, or in a series of trades, as
16 a credit or part payment on the sale of a new or used vehicle,
17 the tax levied herein shall be paid on the net difference,
18 that is, the price of the new or used vehicle sold less the
19 credit for the used vehicle taken in trade.

20 ~~Of the total \$.02 tax on each dollar of sale~~
21 ~~provided hereunder, 58 percent of the total tax generated by~~
22 ~~this subsection shall be deposited to the credit of the~~
23 ~~Education Trust Fund; and 42 percent of the total tax~~
24 ~~generated by this subsection shall be deposited to the credit~~
25 ~~of the State General Fund.~~

26 (d) Every person storing, using or otherwise
27 consuming in this state tangible personal property purchased

1 at retail shall be liable for the tax imposed by this article,
2 and the liability shall not be extinguished until the tax has
3 been paid to this state; provided, that a receipt from a
4 retailer maintaining a place of business in this state or a
5 retailer authorized by the department, under such rules and
6 regulations as it may prescribe, to collect the tax imposed
7 hereby and who shall for the purpose of this article be
8 regarded as a retailer maintaining a place of business in this
9 state, given to the purchaser in accordance with the
10 provisions of Section 40-23-67, shall be sufficient to relieve
11 the purchaser from further liability for tax to which such
12 receipt may refer.

13 (e) An excise tax is hereby imposed on the classes
14 of tangible personal property, and at the rates imposed on
15 such classes, specified in subsections (a), (b) and (c) of
16 this section, on the storage, use, or other consumption in the
17 performance of a contract in this state of any such tangible
18 personal property, new or used, the tax to be measured by the
19 sales price or the fair and reasonable market value of such
20 tangible personal property when put into use in this state,
21 whichever is less; provided, that the tax imposed by this
22 subsection shall not apply where the taxes imposed by
23 subsection (a), (b), or (c) of this section apply.

24 "§40-23-174.

25 (a) Should the enactment of a national agreement for
26 the collection of sales and use taxes from remote sellers
27 establish a single national tax rate on such remote sales or

1 should the agreement provide for the State of Alabama to
2 establish a single statewide rate on such remote sales, the
3 proceeds shall be distributed as follows:

4 (1) One-half of such proceeds shall be distributed
5 to the State of Alabama ~~of which 75%~~ and shall be deposited
6 into the General Fund, ~~and 25% shall be deposited into the~~
7 ~~Education Trust Fund.~~

8 (2) One-quarter shall be distributed to the
9 governing body of the municipality in which the delivery is
10 made, if the delivery is made into a municipality.

11 (3) The remainder shall be distributed to the county
12 governing body in the county in which the delivery is made.

13 (b) The tax proceeds distributed to a municipality
14 or county shall be expended by the governing body of the
15 municipality or county as required and provided by law for
16 other sales and use tax proceeds levied and collected by the
17 county or municipality including any bonded indebtedness.

18 Section 2. Section 40-23-85 of the Code of Alabama
19 1975, as last amended by Act 2015-539 of the 2015 Second
20 Special Session, is amended to read as follows:

21 "§40-23-85.

22 All taxes, fees, interest, or penalties imposed and
23 all amounts of tax herein required to be paid to the state
24 under this article must be paid to the Department of Revenue
25 at Montgomery, Alabama, with remittance payable to the
26 Treasurer of Alabama. Such amount of money as shall be
27 appropriated for each fiscal year by the Legislature to the

1 Department of Revenue with which to pay the salaries, the cost
2 of operation and the management of the department shall be
3 deducted, as a first charge thereon, from the taxes collected
4 under and pursuant to Section 40-23-61; provided, that the
5 expenditure of the sum so appropriated shall be budgeted and
6 allotted pursuant to Article 4 of Chapter 4 of Title 41, and
7 limited to the amount appropriated to defray the expenses of
8 operating the department for each fiscal year. After the
9 distributions provided herein ~~and the distributions of use tax~~
10 ~~on automobiles to the General Fund as provided in Section~~
11 ~~40-23-61(c),~~ the balance of the tax collected under and
12 pursuant to Section 40-23-61 shall be distributed ~~as follows:~~
13 ~~(1) remote use tax amounts, seventy five percent (75%) to the~~
14 ~~General Fund and twenty five percent (25%) to the Education~~
15 ~~Trust Fund, and (2) any remaining amounts, forty seven percent~~
16 ~~(47%) to the Education Trust Fund and fifty three percent~~
17 ~~(53%) to the General Fund. An amount sufficient to fund the~~
18 ~~Children's Health Insurance Program (CHIP) shall be~~
19 ~~distributed annually as a first charge against the amounts~~
20 ~~allocated to the General Fund under this section.~~ It is the
21 legislative intent that all amounts collected on transactions
22 involving a seller located outside the State of Alabama when
23 the property is shipped or transported from outside the state
24 shall be considered use tax for the purpose of this
25 distribution, regardless of whether the taxes may be
26 considered sales taxes for other purposes.

1 Section 3. Notwithstanding the requirements of
2 Section 29-9-3, the changes in the distribution of tax
3 revenues provided in this act shall not be considered in any
4 calculation of the Education Trust Fund fiscal year
5 appropriation cap for the fiscal year ending September 30,
6 2017.

7 Section 4. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 that remains.

11 Section 5. All laws or parts of laws which conflict
12 with this act are repealed.

13 Section 6. This act shall become effective October
14 1, 2016, following its passage and approval by the Governor,
15 or upon its otherwise becoming law.