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SYNOPSIS:

This bill would define "cigarette" and "heated tobacco product" and establish a new levy on heated tobacco products.

A BILL
TO BE ENTITLED
AN ACT

Relating to the tobacco tax; to amend Sections 40-25-1, 40-25-2, 40-25-4, 40-25-8, 40-25-8.1, 40-25-14, 40-25-18, 40-25-25, and 40-25-29, Code of Alabama 1975; to define "cigarette" and "heated tobacco products"; and to establish a new levy on heated tobacco products.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-25-1, 40-25-2, 40-25-4, 40-25-8, 40-25-8.1, 40-25-14, 40-25-18, 40-25-25, and 40-25-29, Code of Alabama 1975, are amended to read as follows:

"§40-25-1

For the purposes of this article, the following terms shall have the respective meanings ascribed by this section:

(1) WHOLESAL DEALER AND JOBBER. Persons, firms, or corporations who buy tobacco products direct from the manufacturer or an affiliate of the manufacturer and sell at



29 wholesale only, any one or more of the articles taxed herein
30 to licensed wholesale dealers, jobbers, semijobbers, and
31 retail dealers for the purpose of resale only.

32 (2) ~~RETAILER~~RETAIL DEALER. Every person, firm, or
33 corporation, other than a wholesale dealer or jobber, who
34 shall sell or offer for sale any one or more of the articles
35 taxed herein, irrespective of quantity or amount, or the
36 number of sales; and all persons operating under a retail
37 dealer's license.

38 (3) SEMIJOBBER. Persons, firms, or corporations who buy
39 tobacco products from permitted wholesalers or obtain tobacco
40 from any other source and sell at wholesale any one or more of
41 the articles taxed herein to licensed retail dealers for the
42 purpose of resale only.

43 (4) STAMPS. The stamp or stamps by the use of which the
44 tax levied under this article is paid and shall be designated
45 Alabama Revenue Stamps.

46 (5) CIGARS, CHEROOTS, STOGIES, ETC. A roll for smoking
47 that is of any size or shape and that is made wholly or in
48 part of tobacco or any substitute therefor, irrespective of
49 whether the tobacco is pure or flavored, adulterated or mixed
50 with any other ingredient, if the roll has a wrapper made
51 wholly or in part of tobacco.

52 (6) HEATED TOBACCO PRODUCTS. A product containing
53 tobacco that produces an inhalable aerosol by heating the
54 tobacco by means of a device without combustion of the tobacco
55 or by heat generated from a combustion source that only or
56 primarily heats rather than burns the tobacco.



57 (7) CIGARETTE or CIGARETTES. Shall have the same
58 meaning as defined in Section 6-12-2 and shall include heated
59 tobacco products as defined herein."

60 "§40-25-2

61 (a) In addition to all other taxes of every kind now
62 imposed by law, every person, firm, corporation, club, or
63 association, within the State of Alabama, who sells or stores
64 or receives for the purpose of distribution to any person,
65 firm, corporation, club, or association within the State of
66 Alabama, cigars, cheroots, stogies, cigarettes, smoking
67 tobacco, chewing tobacco, snuff, heated tobacco products, or
68 any substitute therefor, either or all, shall pay to the State
69 of Alabama for state purposes only a license or privilege tax
70 which shall be measured by and graduated in accordance with
71 the volume of sales of such person, firm, corporation, club,
72 or association in Alabama. There is hereby levied license or
73 privilege taxes on articles containing tobacco enumerated in
74 this article in the following amounts:

75 (1) LITTLE CIGARS. Upon cigars of all descriptions,
76 including filtered cigars, made of tobacco, or any substitute
77 therefor, and weighing not more than three pounds per 1,000,
78 \$.04 for each ten cigars, or fractional part thereof.

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

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



85 therefor, \$40.50 per thousand cigars, or \$0.0405 each.

86 (4) CIGARETTES. Upon all cigarettes, made of tobacco,
87 or any substitute therefor, other than heated tobacco
88 products, 33.75 mills on each such cigarette.

89 (5) SMOKING TOBACCO. Upon all smoking tobacco,
90 including granulated, plug cut, crimp cut, ready rubbed, and
91 other kinds and forms of tobacco prepared in such manner as to
92 be suitable for smoking in a pipe or cigarette, upon each
93 package: Weighing not more than one and one-eighth ounces, tax
94 \$.04; over one and one-eighth ounces, not exceeding two
95 ounces, tax \$.10; over two ounces, not exceeding three ounces,
96 tax \$.16; over three ounces, not exceeding four ounces, tax
97 \$.21; \$.06 additional tax for each ounce or fractional part
98 thereof over four ounces.

99 (6) CHEWING TOBACCO. Upon all chewing tobacco prepared
100 in such manner as to be suitable for chewing only and not
101 suitable for smoking as described and taxed in subdivision (9)
102 of this subsection: \$.015 per ounce or fractional part
103 thereof.

104 (7) SNUFF. Upon each can or package of snuff weighing
105 not more than five-eighths ounces, one cent tax; over
106 five-eighths ounces and not exceeding one and five-eighths
107 ounces, \$.02 tax; over one and five-eighths ounces and not
108 exceeding two and one-half ounces, \$.04 tax; over two and
109 one-half ounces and not exceeding five ounces (cans, packages,
110 gullets), \$.06 tax; over three ounces and not exceeding five
111 ounces (glasses, tumblers, bottles), seven cents tax; over
112 five ounces and not exceeding six ounces, \$.08 tax; weighing



113 over six ounces, an additional \$.12 for each ounce or
114 fractional part thereof.

115 (8) HEATED TOBACCO PRODUCTS. Beginning October 1, 2024,
116 upon all heated tobacco products, the tax on a single-use
117 consumable unit shall be \$0.017.

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

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

126 (d) The tax herein levied, except for the taxes levied
127 by subsections (i) and (j), shall be paid to the state through
128 the use of stamps as herein provided. However, every
129 wholesaler, distributor, jobber, semijobber, or retail dealer
130 shall add the amount of the tax levied herein to the price of
131 the tobacco or tobacco products sold, it being the purpose and
132 intent of this provision that the tax levied is in fact a levy
133 on the ultimate consumer or user with the wholesaler,
134 distributor, jobber, semijobber, or retail dealer acting
135 merely as an agent of the state for the collection and payment
136 of the tax to the state. Therefore, notwithstanding any
137 exemptions from taxes which any such seller may now or
138 hereafter enjoy under the Constitution or laws of this or any
139 other state, or of the United States, he or she shall collect
140 the tax imposed hereunder from the purchaser or consumer, and



141 the amount of the tax shall constitute a debt from the
142 purchaser or consumer to the seller until paid. It shall be
143 unlawful for any person, firm, corporation, association, or
144 copartnership to fail or refuse to add to the sales price and
145 collect from the purchaser the amount of the tax to be added
146 to the sales price and collected from the purchaser hereunder.
147 Stamps in denominations to the amount of the tax or in
148 denominations specified pursuant to subsection (e) of this
149 section shall be affixed to the box or other container from or
150 in which tobacco products taxed by this section are normally
151 sold at retail. The stamps shall be affixed in such a manner
152 that their removal will require continued application of
153 water, steam, or heat; and in case of cigars, cheroots,
154 chewing tobacco and like manufactured tobacco products, where
155 sales are made from the original container, the stamps shall
156 be affixed to the box or container in such a way that the
157 stamps shall be torn in two or mutilated when such containers
158 or boxes are opened for the sale of the tobacco products. In
159 the case of cigarettes, smoking tobacco, snuff, heated tobacco
160 products, and like products sold at retail in packages, the
161 required amount of stamps to cover the tax shall be affixed to
162 each individual package or container. All taxable tobaccos
163 herein enumerated, when offered for sale, either at wholesale
164 or retail, without having stamps affixed in the manner set out
165 by this article, or without payment of the tax by return by
166 the wholesaler, jobber, semijobber, or registered retailer,
167 shall be subject to confiscation, in the manner provided for
168 contraband goods as set out in this article.



169 (e) The Commissioner of Revenue shall prepare and issue
170 stamps in denominations for the amount of the tax imposed by
171 this article provided that if the commissioner determines that
172 it is not economical for the state to have a stamp prepared
173 and issued for one or more particular types of packages of
174 tobacco products, then the commissioner may by regulation
175 prescribe the use of a stamp in a denomination other than for
176 the amount of the tax imposed with the difference between the
177 amount of tax actually imposed and the amount of tax
178 denominated by the stamp paid with the use of a monthly
179 report; or may require a monthly report without use of a stamp
180 to report the amount of taxes due.

181 (f) The increases levied by this section shall be
182 exclusive and shall be in lieu of any other or additional
183 local taxes and/or license fees, county or municipal, imposed
184 on the sale or use of cigarettes, heated tobacco products,
185 and/or other tobacco products. Notwithstanding the foregoing,
186 an act of the Legislature or an ordinance or resolution by a
187 taxing authority passed or enacted on or before May 18, 2004,
188 imposing a local tax and/or license fee shall remain
189 operative, but no additional local tax and/or license fee may
190 thereafter be levied on the sale of cigarettes, heated tobacco
191 products, and/or other tobacco products.

192 (g) Local taxes and/or license fees, county or
193 municipal, imposed on the sale or use of cigarettes shall be
194 paid to the local government through the use of stamps affixed
195 to the product as provided herein for the state tax. Provided,
196 however, this requirement shall not be interpreted to require



197 the Department of Revenue to prepare all stamps or to collect
198 all local taxes. Local governments may contract with another
199 entity to collect their local cigarette tax but all local
200 taxes must be collected as provided herein.

201 (h) Notwithstanding any other provision of this
202 chapter, revenue from the additional tax in subsection (a)(4)
203 imposed by Act 2015-535 shall be deposited into the State
204 General Fund for the Medicaid Program.

205 (i) In the counties that have a local tobacco tax,
206 there is hereby levied an additional county license or
207 privilege tax on heated tobacco products, which shall equal
208 half of the state tax rate provided in subdivision (a)(8) and
209 shall be paid to the county in which the heated tobacco
210 products were sold to the purchaser. Notwithstanding any other
211 provision of this chapter, the taxes imposed by subdivision
212 (a)(8) and this subsection shall be collected by the
213 wholesaler, jobber, semijobber, or registered retailer from
214 the purchaser at the time of purchase.

215 (j) In the municipalities that have a local tobacco
216 tax, there is hereby levied an additional municipal license or
217 privilege tax on heated tobacco products, which shall equal
218 half of the local municipal tax or license fee as applied to
219 the sale of cigarettes and shall be paid to the municipality
220 in which the heated tobacco products were sold to the
221 purchaser. Notwithstanding any other provision of this
222 chapter, the taxes imposed by subdivision (a)(8) and this
223 subsection shall be collected by the wholesaler, jobber,
224 semijobber, or registered retailer from the purchaser at the



225 time of purchase."

226 "§40-25-4

227 The license taxes imposed by this article shall be paid
228 by affixing stamps in the manner and at the time herein set
229 forth. In the case of cigars, stogies, cheroots, chewing
230 tobacco, and like products, the stamps shall be affixed to the
231 box or container in which or from which normally sold at
232 retail. In the case of cigarettes, smoking tobacco, heated
233 tobacco products, and snuff, the stamps shall be affixed to
234 each individual package. Time allowed for affixing stamps
235 shall be as follows: Every wholesale or retail dealer in this
236 state, except wholesalers who are issued a permit by the
237 Department of Revenue, shall immediately after receipt of any
238 unstamped cigars, stogies, cheroots, chewing tobacco,
239 cigarettes, smoking tobacco, heated tobacco products, or
240 snuff, unless sooner offered for sale, cause the same to have
241 the requisite denominations and amount of stamp or stamps to
242 represent the tax affixed as stated herein. The stamping of
243 the cigars, stogies, cheroots, chewing tobacco, cigarettes,
244 smoking tobacco, heated tobacco products, and snuff shall
245 actually begin within one hour after receipt of the cigars,
246 stogies, cheroots, chewing tobacco, cigarettes, smoking
247 tobacco, heated tobacco products, and snuff in the premises of
248 the wholesale or retail dealer, except wholesalers who are
249 issued a permit by the Department of Revenue, and the stamping
250 shall be continued with reasonable diligence by the wholesale
251 or retail dealer until all of the unstamped cigars, stogies,
252 cheroots, chewing tobacco, cigarettes, smoking tobacco, heated



253 tobacco products, and snuff have been stamped. Wholesalers who
254 have been issued a permit by the department shall affix the
255 required stamps prior to any sale. Every wholesale dealer
256 shall at the time of shipping or delivering any tobacco
257 products as enumerated herein make a true duplicate invoice of
258 the same which shall show full and complete details of the
259 sale or delivery of the taxable article, shall state the
260 tobacco tax separately from the price of the tobacco products,
261 and shall retain the same subject to the use and inspection of
262 the Department of Revenue, or its duly authorized agents for a
263 period of three years. Wholesaler invoices must be computer or
264 machine generated and the seller's or supplier's name must be
265 on the invoice. Handwritten invoices may not be considered
266 legitimate documentations to substantiate proof of sale.
267 Wholesale and retail dealers shall also keep a record of
268 purchases of all tobacco products enumerated and defined in
269 this article and hold all books, records, and memoranda
270 pertaining to the purchase and sale of those tobacco products
271 open to the inspection of the Department of Revenue or its
272 duly authorized agents at any and all times. Every wholesale
273 dealer shall furnish to the Department of Revenue a monthly
274 report, between the first and twentieth of each month for the
275 preceding month, of all orders for tobacco products purchased
276 through the wholesale dealer from without this state on a drop
277 shipment and consigned direct to the person, firm,
278 corporation, or association of persons ordering the tobacco
279 products from without this state through the wholesale dealer.
280 If, upon examination of invoices of any tobacco product sold



281 by a wholesaler or purchased or received, or both, by a retail
282 dealer, he or she is unable to furnish evidence to the
283 Department of Revenue of sufficient stamp purchases to cover
284 the unstamped tobaccos purchased, the prima facie presumption
285 shall arise that the tobacco products were sold without the
286 proper stamps affixed thereto. Any wholesaler or retailer who
287 fails or refuses to comply with any or all of the above
288 provisions shall be deemed a violator of this section and,
289 upon conviction, punished by a fine of not less than \$500 nor
290 more than \$1,000, or imprisonment in the county jail for a
291 period of six months, either or both, at the discretion of the
292 court."

293 "§40-25-8

294 Any cigarettes, smoking tobacco, heated tobacco
295 products, cigars, stogies, cheroots, chewing tobacco, snuff,
296 or other products taxable under this article found at any
297 point within the State of Alabama, which the cigarettes,
298 smoking tobacco, heated tobacco products, cigars, stogies,
299 cheroots, chewing tobacco, snuff, or other products taxable
300 under this article shall have been within the State of Alabama
301 for a period of two hours, or longer, in possession of any
302 retailer or semijobber not having affixed to the package the
303 stamps as provided in this article, or in the case of products
304 not requiring a stamp to be affixed where purchase invoices do
305 not itemize the applicable tobacco taxes, are declared to be
306 contraband goods and may be seized by the Department of
307 Revenue, or its agents or by any peace officer of the State of
308 Alabama, without a warrant and the goods shall be delivered to



309 the Department of Revenue for destruction. Any of the goods,
310 wares, or merchandise when offered for sale, either at
311 wholesale or retail without the stamps having been first
312 affixed, or in the case of products not requiring a stamp to
313 be affixed where purchase invoices do not itemize the
314 applicable tobacco taxes, shall be subject to confiscation as
315 hereinabove provided. Any untaxed cigarettes, smoking tobacco,
316 heated tobacco products, cigars, stogies, cheroots, chewing
317 tobacco, snuff, or other products taxable under this article
318 found at any location within the State of Alabama, other than
319 the primary location of the permitted wholesaler or jobber,
320 registered semijobber, registered retailer or tobacco products
321 manufacturer who stores tobacco products at a bonded warehouse
322 in this state for resale, are declared to be contraband goods,
323 and those goods may be seized by the Department of Revenue, or
324 its agents or by any peace officer of the State of Alabama,
325 without a warrant and the goods shall be delivered to the
326 Department of Revenue for destruction. Any vehicle, not a
327 common carrier, used for the transportation for the purpose of
328 sale of unstamped articles as hereinabove enumerated shall
329 likewise be subject to confiscation and sale at public auction
330 to the highest bidder after due advertisement and notice to
331 the title owner of the vehicle. The proceeds of sale for any
332 vehicle sold hereunder shall be deposited into the State
333 Treasury by the Department of Revenue to be credited in the
334 same manner as the tax otherwise due on the tobacco products
335 being transported. The cost of confiscation and sale shall be
336 paid out of the proceeds derived from the sale before making



337 remittance to the Treasurer. Should any unstamped tobaccos be
338 found in any vehicle which is engaged in the sale,
339 distribution, or delivery of taxable tobaccos, the same shall
340 be prima facie evidence that it was there for sale."

341 "§40-25-8.1

342 (a) Each person, firm, corporation, club, or
343 association that transports products required to be stamped as
344 provided in Section 40-25-8, which are not stamped or on which
345 tax has not been paid in accordance with this chapter and
346 Chapter 25A, upon the public highways, roads, or streets of
347 this state is required to have an active tobacco permit or
348 transporters permit under this chapter. Failure to obtain a
349 permit prior to transporting the products is a violation of
350 this section. A violation of this section may result in the
351 products being declared contraband goods that may be seized
352 without warrant by any law enforcement officer in this state.
353 The contraband goods may be disposed of or destroyed by the
354 law enforcement officer in accordance with this chapter. In
355 addition, a vehicle used in the transportation of confiscated
356 products may be subject to confiscation by the law enforcement
357 officer and sold at public auction to the highest bidder after
358 due advertisement pursuant to Chapter 13 of Title 32.

359 (b) The owner or driver, or both, of a vehicle used in
360 a violation of this section is guilty of a Class A misdemeanor
361 unless the tobacco products being transported exceeds any of
362 the following quantities: 25,000 cigars, 50,000 filtered
363 cigars, 50,000 little cigars, 50,000 cigarettes, 50,000 heated
364 tobacco products, 25,000 cigar wraps, or 2,500 individual



365 containers of loose or smokeless tobacco, in which case the
366 owner or driver is guilty of a Class C felony. Any person
367 convicted of a second or subsequent offense for a violation of
368 this section is guilty of a Class C felony, regardless of the
369 amount of tobacco products involved in the violation.

370 (c) This section shall not apply to individuals
371 transporting tobacco for personal consumption as provided in
372 Section 40-25-25."

373 "§40-25-14

374 Each and every wholesaler or jobber qualifying as such
375 with the Department of Revenue shall be required to file a
376 report between the first and twentieth of each month, covering
377 the purchase or receipt by them of all tobacco products
378 enumerated and defined herein during the preceding month. Said
379 report shall give in detail the different kinds and quantities
380 of tobacco products so purchased or received by them during
381 the preceding month. The Department of Revenue shall furnish
382 any person seeking to bring an action under Section 8-19-10
383 with information permitting the identification of a
384 distributor which has affixed a stamp to a package of
385 cigarettes or heated tobacco products in accordance with this
386 section. In addition, between the first and twentieth of each
387 month, each person licensed to affix the state tax stamp to
388 cigarettes or heated tobacco products shall file with the
389 Department of Revenue, for all cigarettes or heated tobacco
390 products imported into the United States to which such person
391 has affixed the Alabama revenue stamp in the preceding month,
392 copies of the customs certificates with respect to such



393 cigarettes or heated tobacco products required to be submitted
394 by 19 U.S.C. §1681a(c). Any wholesaler or jobber failing or
395 refusing to file the above report in the manner and time
396 allowed shall be deemed a violator of this section and upon
397 conviction shall be fined not less than \$100 nor more than
398 \$500 for each offense."

399 "§40-25-18

400 (a) Persons failing to properly affix the required
401 stamps to any cigars, cheroots, stogies, cigarettes, smoking
402 tobacco, heated tobacco products, chewing tobacco, and snuff
403 shall be required to pay, as part of the tax imposed
404 hereunder, a penalty of not less than twenty-five dollars
405 (\$25) nor more than five hundred dollars (\$500). Each article
406 or commodity not having proper stamps affixed thereto as
407 herein required shall be deemed a separate offense. Any
408 cigars, cheroots, stogies, cigarettes, smoking tobacco, heated
409 tobacco products, chewing tobacco, and snuff in the place of
410 business of any person required by this article to stamp the
411 same shall be prima facie evidence that they are intended for
412 sale. The Department of Revenue, upon good cause shown, may
413 waive or remit any penalty or any part thereof provided for in
414 this section. Any person, firm, corporation, club, or
415 association of persons who has been found guilty of violating
416 this article and who, after being punished by fine, penalty,
417 assessment, or imprisonment, is found guilty of a second or
418 subsequent violation of this article shall have their license,
419 as provided in Sections 40-12-72 and 40-12-73, revoked by the
420 department, and no further license or permit shall be issued



421 or granted to that person, firm, corporation, club, or
422 association of persons for a period of one year from the date
423 their license or permit has been revoked. Notice of the
424 revocation shall be mailed to the probate judge and license
425 inspector of the county in which the revocation was made.

426 (b) In addition to the penalty levied by the department
427 pursuant to subsection (a), the county license inspector,
428 license commissioner, revenue commissioner, tax assessor, or
429 tax collector of the county in which the untaxed tobacco
430 product is located may assess a penalty against any person
431 failing to affix the required stamps to any cigars, cheroots,
432 stogies, cigarettes, smoking tobacco, heated tobacco products,
433 and snuff. The amount of the additional penalty shall be not
434 less than one hundred dollars (\$100) nor more than five
435 hundred dollars (\$500).

436 (c) The department and local taxing official may assess
437 the tax levied by this chapter pursuant to the assessment
438 procedures set out in Chapter 2A of this title."

439 "§40-25-25

440 If any person, firm or corporation who is not a
441 regularly licensed dealer in tobacco products shall have in
442 his possession within the state more than 30 packages of
443 unstamped cigarettes or heated tobacco products or more than
444 one box of unstamped cigars, such possession shall be presumed
445 to be for the purpose of evading the payment of the taxes due
446 thereon."

447 "§40-25-29

448 Any excise, license, privilege, or other tax levied on



449 the sale of cigarettes or heated tobacco products by any
450 county or municipal government within the State of Alabama
451 shall be levied on the basis of a millage rate per cigarette
452 or per single-use consumable unit of heated tobacco product,
453 in a manner similar to the method of specifying the tax levied
454 on cigarettes or heated tobacco products by ~~subdivision (8) of~~
455 ~~subsection (a) of~~ Section 40-25-2 (a), except where such taxing
456 authority has levied a per package tax on cigarettes without
457 any distinction as to the amount of cigarettes or heated
458 tobacco products per package. This provision does not specify
459 or limit the rate or amount of tax which may be levied on
460 cigarettes or heated tobacco products by such county or
461 municipal government. This provision is not to be construed as
462 limiting or extending the taxing authority of any county or
463 municipal government but rather this section specifies the
464 manner in which such taxing authority may be exercised by the
465 county or municipal government for the protection of the tax
466 revenues accruing to the state and said county or municipal
467 government, and for the protection of the public welfare,
468 health, peace and morals of the people of this state."

469 Section 2. This act shall become effective on October
470 1, 2024.