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5	A BILL
6	TO BE ENTITLED
7	AN ACT
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9	Relating to the tobacco tax; to amend Sections 40-25-1,
10	40-25-2, 40-25-4, 40-25-8, 40-25-8.1, 40-25-14, 40-25-18,
11	40-25-25, and 40-25-29, Code of Alabama 1975; to define
12	"cigarette" and "heated tobacco products"; and to establish a
13	new levy on heated tobacco products.
14	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
15	Section 1. Sections 40-25-1, 40-25-2, 40-25-4, 40-25-8,
16	40-25-8.1, 40-25-14, 40-25-18, 40-25-25, and 40-25-29, Code of
17	Alabama 1975, are amended to read as follows:
18	<b>"</b> §40-25-1
19	For the purposes of this article, the following terms
20	shall have the respective meanings ascribed by this section:
21	(1) WHOLESALE DEALER AND JOBBER. Persons, firms, or
22	corporations who buy tobacco products direct from the
23	manufacturer or an affiliate of the manufacturer and sell at
24	wholesale only, any one or more of the articles taxed herein
25	to licensed wholesale dealers, jobbers, semijobbers, and
26	retail dealers for the purpose of resale only.
27	(2) RETAILER RETAIL DEALER. Every person, firm, or
28	corporation, other than a wholesale dealer or jobber, who



- shall sell or offer for sale any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales; and all persons operating under a retail
- 32 dealer's license.
- 33 (3) SEMIJOBBER. Persons, firms, or corporations who buy
  34 tobacco products from permitted wholesalers or obtain tobacco
  35 from any other source and sell at wholesale any one or more of
  36 the articles taxed herein to licensed retail dealers for the
  37 purpose of resale only.
- 38 (4) STAMPS. The stamp or stamps by the use of which the 39 tax levied under this article is paid and shall be designated 40 Alabama Revenue Stamps.
- that is of any size or shape and that is made wholly or in
  part of tobacco or any substitute therefor, irrespective of
  whether the tobacco is pure or flavored, adulterated or mixed
  with any other ingredient, if the roll has a wrapper made
  wholly or in part of tobacco.
  - (6) HEATED TOBACCO PRODUCTS. A product containing tobacco that produces an inhalable aerosol by heating the tobacco by means of a device without combustion of the tobacco or by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.
  - (7) CIGARETTE or CIGARETTES. Shall have the same meaning as defined in Section 6-12-2 and shall include heated tobacco products as defined herein."
- 55 **"**\$40-25-2

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56 (a) In addition to all other taxes of every kind now



- 57 imposed by law, every person, firm, corporation, club, or 58 association, within the State of Alabama, who sells or stores 59 or receives for the purpose of distribution to any person, 60 firm, corporation, club, or association within the State of 61 Alabama, cigars, cheroots, stogies, cigarettes, smoking 62 tobacco, chewing tobacco, snuff, heated tobacco products, or any substitute therefor, either or all, shall pay to the State 63 64 of Alabama for state purposes only a license or privilege tax which shall be measured by and graduated in accordance with 65 the volume of sales of such person, firm, corporation, club, 66 67 or association in Alabama. There is hereby levied license or privilege taxes on articles containing tobacco enumerated in 68 this article in the following amounts: 69
- 70 (1) LITTLE CIGARS. Upon cigars of all descriptions,
  71 including filtered cigars, made of tobacco, or any substitute
  72 therefor, and weighing not more than three pounds per 1,000,
  73 \$.04 for each ten cigars, or fractional part thereof.

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- (2) FILTERED CIGARS. Upon filtered cigars that have a cellulose acetate or similar integrated filter, made of tobacco, or any substitute therefor, and weighing more than three pounds per 1,000, \$0.015 for each filtered cigar.
- 78 (3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other
  79 cigars of any descriptions made of tobacco, or any substitute
  80 therefor, \$40.50 per thousand cigars, or \$0.0405 each.
  - (4) CIGARETTES. Upon all cigarettes, made of tobaccoror any substitute therefor, other than heated tobaccoproducts, 33.75 mills on each such cigarette.
    - (5) SMOKING TOBACCO. Upon all smoking tobacco,



- 85 including granulated, plug cut, crimp cut, ready rubbed, and 86 other kinds and forms of tobacco prepared in such manner as to 87 be suitable for smoking in a pipe or cigarette, upon each 88 package: Weighing not more than one and one-eighth ounces, tax 89 \$.04; over one and one-eighth ounces, not exceeding two 90 ounces, tax \$.10; over two ounces, not exceeding three ounces, 91 tax \$.16; over three ounces, not exceeding four ounces, tax 92 \$.21; \$.06 additional tax for each ounce or fractional part thereof over four ounces. 93
- 94 (6) CHEWING TOBACCO. Upon all chewing tobacco prepared 95 in such manner as to be suitable for chewing only and not 96 suitable for smoking as described and taxed in subdivision (9) 97 of this subsection: \$.015 per ounce or fractional part 98 thereof.
- 99 (7) SNUFF. Upon each can or package of snuff weighing not more than five-eighths ounces, one cent tax; over 100 101 five-eighths ounces and not exceeding one and five-eighths 102 ounces, \$.02 tax; over one and five-eighths ounces and not 103 exceeding two and one-half ounces, \$.04 tax; over two and 104 one-half ounces and not exceeding five ounces (cans, packages, 105 gullets), \$.06 tax; over three ounces and not exceeding five 106 ounces (glasses, tumblers, bottles), seven cents tax; over 107 five ounces and not exceeding six ounces, \$.08 tax; weighing 108 over six ounces, an additional \$.12 for each ounce or 109 fractional part thereof.
- 110 (8) HEATED TOBACCO PRODUCTS. Beginning October 1, 2024,

  111 upon all heated tobacco products, the tax on a single-use

  112 consumable unit shall be \$0.03375.

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- (b) Whenever in this article reference is made to any manufactured tobacco products on which the tax is based on weight, the weight as shown by the manufacturer or the federal internal revenue stamp shall apply.
- (c) When any articles or commodities subject to tax in this article are given as prizes on punch boards, shooting galleries, premiums, etc., the tax shall be based on the tax rates in subsection (a) of such articles.
- 121 (d) The tax herein levied, except for the taxes levied by subsections (i) and (j), shall be paid to the state through 122 the use of stamps as herein provided. However, every 123 wholesaler, distributor, jobber, semijobber, or retail dealer 124 125 shall add the amount of the tax levied herein to the price of 126 the tobacco or tobacco products sold, it being the purpose and 127 intent of this provision that the tax levied is in fact a levy 128 on the ultimate consumer or user with the wholesaler, 129 distributor, jobber, semijobber, or retail dealer acting 130 merely as an agent of the state for the collection and payment 131 of the tax to the state. Therefore, notwithstanding any 132 exemptions from taxes which any such seller may now or 133 hereafter enjoy under the Constitution or laws of this or any other state, or of the United States, he or she shall collect 134 135 the tax imposed hereunder from the purchaser or consumer, and 136 the amount of the tax shall constitute a debt from the 137 purchaser or consumer to the seller until paid. It shall be 138 unlawful for any person, firm, corporation, association, or copartnership to fail or refuse to add to the sales price and 139 140 collect from the purchaser the amount of the tax to be added

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to the sales price and collected from the purchaser hereunder. Stamps in denominations to the amount of the tax or in denominations specified pursuant to subsection (e) of this section shall be affixed to the box or other container from or in which tobacco products taxed by this section are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water, steam, or heat; and in case of cigars, cheroots, chewing tobacco and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, smoking tobacco, snuff, heated tobacco products, and like products sold at retail in packages, the required amount of stamps to cover the tax shall be affixed to each individual package or container. All taxable tobaccos herein enumerated, when offered for sale, either at wholesale or retail, without having stamps affixed in the manner set out by this article, or without payment of the tax by return by the wholesaler, jobber, semijobber, or registered retailer, shall be subject to confiscation, in the manner provided for contraband goods as set out in this article.

(e) The Commissioner of Revenue shall prepare and issue stamps in denominations for the amount of the tax imposed by this article provided that if the commissioner determines that it is not economical for the state to have a stamp prepared and issued for one or more particular types of packages of



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tobacco products, then the commissioner may by regulation

prescribe the use of a stamp in a denomination other than for

the amount of the tax imposed with the difference between the

amount of tax actually imposed and the amount of tax

denominated by the stamp paid with the use of a monthly

report; or may require a monthly report without use of a stamp

to report the amount of taxes due.

- (f) The increases levied by this section shall be exclusive and shall be in lieu of any other or additional local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes, heated tobacco products, and/or other tobacco products. Notwithstanding the foregoing, an act of the Legislature or an ordinance or resolution by a taxing authority passed or enacted on or before May 18, 2004, imposing a local tax and/or license fee shall remain operative, but no additional local tax and/or license fee may thereafter be levied on the sale of cigarettes, heated tobacco products, and/or other tobacco products.
- (g) Local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes shall be paid to the local government through the use of stamps affixed to the product as provided herein for the state tax. Provided, however, this requirement shall not be interpreted to require the Department of Revenue to prepare all stamps or to collect all local taxes. Local governments may contract with another entity to collect their local cigarette tax but all local taxes must be collected as provided herein.
  - (h) Notwithstanding any other provision of this



chapter, revenue from the additional tax in subsection (a)(4)
imposed by Act 2015-535 shall be deposited into the State
General Fund for the Medicaid Program.

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

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

221 "\$40-25-4

The license taxes imposed by this article shall be paid by affixing stamps in the manner and at the time herein set forth. In the case of cigars, stogies, cheroots, chewing



225 tobacco, and like products, the stamps shall be affixed to the 226 box or container in which or from which normally sold at 227 retail. In the case of cigarettes, smoking tobacco, heated 228 tobacco products, and snuff, the stamps shall be affixed to 229 each individual package. Time allowed for affixing stamps 230 shall be as follows: Every wholesale or retail dealer in this 231 state, except wholesalers who are issued a permit by the 232 Department of Revenue, shall immediately after receipt of any 233 unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, or 234 235 snuff, unless sooner offered for sale, cause the same to have 236 the requisite denominations and amount of stamp or stamps to 237 represent the tax affixed as stated herein. The stamping of 238 the cigars, stogies, cheroots, chewing tobacco, cigarettes, 239 smoking tobacco, heated tobacco products, and snuff shall actually begin within one hour after receipt of the cigars, 240 241 stogies, cheroots, chewing tobacco, cigarettes, smoking 242 tobacco, heated tobacco products, and snuff in the premises of 243 the wholesale or retail dealer, except wholesalers who are 244 issued a permit by the Department of Revenue, and the stamping 245 shall be continued with reasonable diligence by the wholesale 246 or retail dealer until all of the unstamped cigars, stogies, 247 cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, and snuff have been stamped. Wholesalers who 248 249 have been issued a permit by the department shall affix the 250 required stamps prior to any sale. Every wholesale dealer shall at the time of shipping or delivering any tobacco 251 252 products as enumerated herein make a true duplicate invoice of

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the same which shall show full and complete details of the sale or delivery of the taxable article, shall state the tobacco tax separately from the price of the tobacco products, and shall retain the same subject to the use and inspection of the Department of Revenue, or its duly authorized agents for a period of three years. Wholesaler invoices must be computer or machine generated and the seller's or supplier's name must be on the invoice. Handwritten invoices may not be considered legitimate documentations to substantiate proof of sale. Wholesale and retail dealers shall also keep a record of purchases of all tobacco products enumerated and defined in this article and hold all books, records, and memoranda pertaining to the purchase and sale of those tobacco products open to the inspection of the Department of Revenue or its duly authorized agents at any and all times. Every wholesale dealer shall furnish to the Department of Revenue a monthly report, between the first and twentieth of each month for the preceding month, of all orders for tobacco products purchased through the wholesale dealer from without this state on a drop shipment and consigned direct to the person, firm, corporation, or association of persons ordering the tobacco products from without this state through the wholesale dealer. If, upon examination of invoices of any tobacco product sold by a wholesaler or purchased or received, or both, by a retail dealer, he or she is unable to furnish evidence to the Department of Revenue of sufficient stamp purchases to cover the unstamped tobaccos purchased, the prima facie presumption shall arise that the tobacco products were sold without the



proper stamps affixed thereto. Any wholesaler or retailer who fails or refuses to comply with any or all of the above provisions shall be deemed a violator of this section and, upon conviction, punished by a fine of not less than \$500 nor more than \$1,000, or imprisonment in the county jail for a period of six months, either or both, at the discretion of the court."

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Any cigarettes, smoking tobacco, heated tobacco products, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any point within the State of Alabama, which the cigarettes, smoking tobacco, heated tobacco products, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having affixed to the package the stamps as provided in this article, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, are declared to be contraband goods and may be seized by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for destruction. Any of the goods, wares, or merchandise when offered for sale, either at wholesale or retail without the stamps having been first affixed, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the



309 applicable tobacco taxes, shall be subject to confiscation as 310 hereinabove provided. Any untaxed cigarettes, smoking tobacco, 311 heated tobacco products, cigars, stogies, cheroots, chewing 312 tobacco, snuff, or other products taxable under this article 313 found at any location within the State of Alabama, other than 314 the primary location of the permitted wholesaler or jobber, 315 registered semijobber, registered retailer or tobacco products 316 manufacturer who stores tobacco products at a bonded warehouse 317 in this state for resale, are declared to be contraband goods, and those goods may be seized by the Department of Revenue, or 318 319 its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the 320 321 Department of Revenue for destruction. Any vehicle, not a 322 common carrier, used for the transportation for the purpose of 323 sale of unstamped articles as hereinabove enumerated shall likewise be subject to confiscation and sale at public auction 324 325 to the highest bidder after due advertisement and notice to 326 the title owner of the vehicle. The proceeds of sale for any 327 vehicle sold hereunder shall be deposited into the State 328 Treasury by the Department of Revenue to be credited in the same manner as the tax otherwise due on the tobacco products 329 330 being transported. The cost of confiscation and sale shall be 331 paid out of the proceeds derived from the sale before making 332 remittance to the Treasurer. Should any unstamped tobaccos be 333 found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall 334 be prima facie evidence that it was there for sale." 335 336 "\$40-25-8.1

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- (a) Each person, firm, corporation, club, or association that transports products required to be stamped as provided in Section 40-25-8, which are not stamped or on which tax has not been paid in accordance with this chapter and Chapter 25A, upon the public highways, roads, or streets of this state is required to have an active tobacco permit or transporters permit under this chapter. Failure to obtain a permit prior to transporting the products is a violation of this section. A violation of this section may result in the products being declared contraband goods that may be seized without warrant by any law enforcement officer in this state. The contraband goods may be disposed of or destroyed by the law enforcement officer in accordance with this chapter. In addition, a vehicle used in the transportation of confiscated products may be subject to confiscation by the law enforcement officer and sold at public auction to the highest bidder after due advertisement pursuant to Chapter 13 of Title 32.
- (b) The owner or driver, or both, of a vehicle used in a violation of this section is guilty of a Class A misdemeanor unless the tobacco products being transported exceeds any of the following quantities: 25,000 cigars, 50,000 filtered cigars, 50,000 little cigars, 50,000 cigarettes, 50,000 heated tobacco products, 25,000 cigar wraps, or 2,500 individual containers of loose or smokeless tobacco, in which case the owner or driver is guilty of a Class C felony. Any person convicted of a second or subsequent offense for a violation of this section is guilty of a Class C felony, regardless of the amount of tobacco products involved in the violation.



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

"\$40-25-14

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Each and every wholesaler or jobber qualifying as such with the Department of Revenue shall be required to file a report between the first and twentieth of each month, covering the purchase or receipt by them of all tobacco products enumerated and defined herein during the preceding month. Said report shall give in detail the different kinds and quantities of tobacco products so purchased or received by them during the preceding month. The Department of Revenue shall furnish any person seeking to bring an action under Section 8-19-10 with information permitting the identification of a distributor which has affixed a stamp to a package of cigarettes or heated tobacco products in accordance with this section. In addition, between the first and twentieth of each month, each person licensed to affix the state tax stamp to cigarettes or heated tobacco products shall file with the Department of Revenue, for all cigarettes or heated tobacco products imported into the United States to which such person has affixed the Alabama revenue stamp in the preceding month, copies of the customs certificates with respect to such cigarettes or heated tobacco products required to be submitted by 19 U.S.C. §1681a(c). Any wholesaler or jobber failing or refusing to file the above report in the manner and time allowed shall be deemed a violator of this section and upon conviction shall be fined not less than \$100 nor more than



393 \$500 for each offense."

394 "\$40-25-18

395 (a) Persons failing to properly affix the required 396 stamps to any cigars, cheroots, stogies, cigarettes, smoking 397 tobacco, heated tobacco products, chewing tobacco, and snuff 398 shall be required to pay, as part of the tax imposed 399 hereunder, a penalty of not less than twenty-five dollars 400 (\$25) nor more than five hundred dollars (\$500). Each article 401 or commodity not having proper stamps affixed thereto as herein required shall be deemed a separate offense. Any 402 403 cigars, cheroots, stogies, cigarettes, smoking tobacco, heated tobacco products, chewing tobacco, and snuff in the place of 404 405 business of any person required by this article to stamp the 406 same shall be prima facie evidence that they are intended for 407 sale. The Department of Revenue, upon good cause shown, may 408 waive or remit any penalty or any part thereof provided for in 409 this section. Any person, firm, corporation, club, or 410 association of persons who has been found guilty of violating 411 this article and who, after being punished by fine, penalty, 412 assessment, or imprisonment, is found quilty of a second or subsequent violation of this article shall have their license, 413 414 as provided in Sections 40-12-72 and 40-12-73, revoked by the 415 department, and no further license or permit shall be issued 416 or granted to that person, firm, corporation, club, or 417 association of persons for a period of one year from the date their license or permit has been revoked. Notice of the 418 revocation shall be mailed to the probate judge and license 419 420 inspector of the county in which the revocation was made.



- (b) In addition to the penalty levied by the department pursuant to subsection (a), the county license inspector, license commissioner, revenue commissioner, tax assessor, or tax collector of the county in which the untaxed tobacco product is located may assess a penalty against any person failing to affix the required stamps to any cigars, cheroots, stogies, cigarettes, smoking tobacco, heated tobacco products, and snuff. The amount of the additional penalty shall be not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- 431 (c) The department and local taxing official may assess
  432 the tax levied by this chapter pursuant to the assessment
  433 procedures set out in Chapter 2A of this title."

434 "\$40-25-25

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

442 "\$40-25-29

Any excise, license, privilege, or other tax levied on the sale of cigarettes or heated tobacco products by any county or municipal government within the State of Alabama shall be levied on the basis of a millage rate per cigarette or per single-use consumable unit of heated tobacco product, in a manner similar to the method of specifying the tax levied

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on cigarettes or heated tobacco products by subdivision (8) of subsection (a) of Section 40-25-2(a), except where such taxing authority has levied a per package tax on cigarettes without any distinction as to the amount of cigarettes or heated tobacco products per package. This provision does not specify or limit the rate or amount of tax which may be levied on cigarettes or heated tobacco products by such county or municipal government. This provision is not to be construed as limiting or extending the taxing authority of any county or municipal government but rather this section specifies the manner in which such taxing authority may be exercised by the county or municipal government for the protection of the tax revenues accruing to the state and said county or municipal government, and for the protection of the public welfare, health, peace and morals of the people of this state." Section 2. This act shall become effective on October 1, 2024.