House Ways and Means General Fund Reported Substitute for HB357

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 levy a tax 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) WHOLESALE DEALER AND JOBBER. Persons, firms, or corporations who buy tobacco products direct from the manufacturer or an affiliate of the manufacturer and sell at wholesale only, any one or more of the articles taxed herein to licensed wholesale dealers, jobbers, semijobbers, and retail dealers for the purpose of resale only.

(2) ~~RETAILER~~RETAIL DEALER. Every person, firm, or 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 dealer's license.

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

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

(5) CIGARS, CHEROOTS, STOGIES, ETC. A roll for smoking 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 PRODUCT. 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."

"§40-25-2

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

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

(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.

(3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other cigars of any descriptions made of tobacco, or any substitute therefor, $40.50 per thousand cigars, or $0.0405 each.

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

(5) SMOKING TOBACCO. Upon all smoking tobacco,

including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, upon each package: Weighing not more than one and one-eighth ounces, tax $.04; over one and one-eighth ounces, not exceeding two ounces, tax $.10; over two ounces, not exceeding three ounces, tax $.16; over three ounces, not exceeding four ounces, tax $.21; $.06 additional tax for each ounce or fractional part thereof over four ounces.

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

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

(8) HEATED TOBACCO PRODUCTS. Beginning October 1, 2025, upon all heated tobacco products, the tax on a single-use consumable unit shall be $0.017 per single-use consumable

unit.

(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.

(d) The tax herein levied, except for the taxes levied by subsections (i) and (j), shall be paid to the state through the use of stamps as herein provided. However, every wholesaler, distributor, jobber, semijobber, or retail dealer shall add the amount of the tax levied herein to the price of the tobacco or tobacco products sold, it being the purpose and intent of this provision that the tax levied is in fact a levy on the ultimate consumer or user with the wholesaler, distributor, jobber, semijobber, or retail dealer acting merely as an agent of the state for the collection and payment of the tax to the state. Therefore, notwithstanding any exemptions from taxes which any such seller may now or hereafter enjoy under the Constitution or laws of this or any other state, or of the United States, he or she shall collect the tax imposed hereunder from the purchaser or consumer, and the amount of the tax shall constitute a debt from the purchaser or consumer to the seller until paid. It shall be unlawful for any person, firm, corporation, association, or copartnership to fail or refuse to add to the sales price and collect from the purchaser the amount of the tax to be added 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 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 as 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."

"§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 tobacco, and like products, the stamps shall be affixed to the box or container in which or from which normally sold at retail. In the case of cigarettes, smoking tobacco, heated tobacco products, and snuff, the stamps shall be affixed to each individual package. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this state, except wholesalers who are issued a permit by the Department of Revenue, shall immediately after receipt of any unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, or snuff, unless sooner offered for sale, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein. The stamping of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, and snuff shall actually begin within one hour after receipt of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, and snuff in the premises of the wholesale or retail dealer, except wholesalers who are issued a permit by the Department of Revenue, and the stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, heated tobacco products, and snuff have been stamped. Wholesalers who have been issued a permit by the department shall affix the required stamps prior to any sale. Every wholesale dealer shall at the time of shipping or delivering any tobacco products as enumerated herein make a true duplicate invoice of 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."

"§40-25-8

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 applicable tobacco taxes, shall be subject to confiscation as hereinabove provided. Any untaxed cigarettes, smoking tobacco, heated tobacco products, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any location within the State of Alabama, other than the primary location of the permitted wholesaler or jobber, registered semijobber, registered retailer or tobacco products manufacturer who stores tobacco products at a bonded warehouse in this state for resale, are declared to be contraband goods, and those goods 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 vehicle, not a common carrier, used for the transportation for the purpose of sale of unstamped articles as hereinabove enumerated shall likewise be subject to confiscation and sale at public auction to the highest bidder after due advertisement and notice to the title owner of the vehicle. The proceeds of sale for any vehicle sold hereunder shall be deposited into the State Treasury by the Department of Revenue to be credited in the same manner as the tax otherwise due on the tobacco products being transported. The cost of confiscation and sale shall be paid out of the proceeds derived from the sale before making remittance to the Treasurer. Should any unstamped tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale."

"§40-25-8.1

(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

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 $500 for each offense."

"§40-25-18

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

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

"§40-25-25

If any person, firm, or corporation who is not a regularly licensed dealer in tobacco products shall have in his or her 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."

"§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 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, 2025.