

1 HB39
2 170964-2
3 By Representatives Williams (JD), Johnson (K), Sessions,
4 Harper, Sanderford, Clouse, Martin, McCutcheon, Wingo,
5 Polizos, Williams (JW), Butler, Shiver, Faust, Nordgren,
6 Chesteen, Brown, Beech, Sells, Fridy, Whorton (R), Patterson,
7 Pettus, Ingram, Ball, Hubbard and McMillan
8 RFD: Ways and Means General Fund
9 First Read: 03-AUG-15

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8 SYNOPSIS: This bill would levy an excise tax, in
9 addition to the sales and use taxes, on the
10 receipts from the sale of sexually-oriented
11 materials.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 To levy an excise tax, in addition to the sales and
18 use taxes, on the receipts from the sale of sexually-oriented
19 materials.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) The Legislature finds that:

22 (1) Under current Alabama law, it is unlawful for a
23 minor to purchase, use, or possess alcoholic beverages or
24 tobacco products.

25 (2) Also under current law, it is illegal for any
26 person to distribute to a minor any material which is harmful
27 to minors, including certain sexually-oriented materials.

1 (3) Alcoholic beverages and tobacco products are
2 further regulated by the state through the levy of specific
3 excise taxes in addition to sales and use taxes; however, the
4 state does not levy an excise tax on sexually-oriented
5 materials.

6 (b) The purpose of this act is to levy an excise tax
7 on sexually-oriented materials such that all products whose
8 acquisition by or sale to minors is prohibited by the state in
9 the same manner.

10 Section 2. As used in this act, the following terms
11 shall have the following meanings

12 (1) DEALER. A manufacturer, distributor, wholesaler,
13 or retailer engaged in the sale of sexually-oriented
14 materials.

15 (2) DEPARTMENT. The Department of Revenue.

16 (3) MINOR. Any person under the age of 18 years.

17 (4) PERSON. Any individual and, except where
18 inappropriate, any partnership, firm, association, corporation
19 or other legal entity.

20 (5) SEXUAL CONDUCT. The term means:

21 a. Any act of sexual intercourse, masturbation,
22 urination, defecation, lewd exhibition of the genitals,
23 sado-masochistic abuse, bestiality, or the fondling of the sex
24 organs of animals; or

25 b. Any other physical contact with a person's
26 unclothed genitals, pubic area, buttocks, or the breast or
27 breasts of a female, whether alone or between members of the

1 same or opposite sex or between a human and an animal, in an
2 act of sexual stimulation, gratification, or perversion.

3 (6) SEXUALLY-ORIENTED MATERIAL. Any book, magazine,
4 newspaper, printed or written matter, writing, description,
5 picture, drawing, animation, photograph, motion picture, film,
6 video tape, pictorial presentation, depiction, image,
7 electrical or electronic reproduction, broadcast,
8 transmission, video download, telephone communication, sound
9 recording, article, device, equipment, matter, oral
10 communication, depicting breast or genital nudity or sexual
11 conduct as defined herein.

12 (7) TAXPAYER. Any person liable for the tax or taxes
13 under this act.

14 Section 3. (a) In addition to any other applicable
15 taxes, a 40 percent state excise tax on the gross receipts
16 resulting from the sale or rental of sexually-oriented
17 material the sale or rental of which is prohibited to a minor
18 as defined herein.

19 (b) The tax levied by this subsection shall not
20 apply to motion pictures designated by the rating board for
21 the Motion Picture Association of America by the letter "R"
22 for restricted audiences, persons under 17 years of age not
23 admitted unless accompanied by parent or adult guardian, or
24 the designation "NC-17" for persons under 17 years of age not
25 admitted. In addition, this subsection shall not apply to: (1)
26 any contraceptive device or medication or (2) any medication

1 that is prescribed by a physician that is intended to enhance
2 sexual performance or sexual enjoyment.

3 (c) The tax levied by this subsection shall be paid
4 by the dealer when the product is sold. A person subject to
5 the tax imposed by this subsection shall file monthly returns
6 and remit the tax for the month to the department on or before
7 the twentieth (20th) day of the next month following the month
8 in which the sale was made. The return shall be made upon
9 forms prescribed and furnished by the department.

10 (d) All taxes collected by the department under this
11 subsection for the benefit of the state shall be deposited
12 into the State General Fund.

13 (e) In addition to the tax levied pursuant to
14 subdivision (a) of this section, there is hereby levied an
15 additional excise tax of 10 percent of the gross receipts
16 resulting from the sale or rental of sexually-oriented
17 material as defined herein. The tax shall be collected in the
18 same manner as the state excise tax. From the proceeds of this
19 tax, the state shall pay one-half of the total proceeds to the
20 county and one-half of the proceeds to the municipality in
21 which the sale occurred and one-half of the proceeds to the
22 municipality in which the sale occurred. If the sale occurs in
23 an unincorporated area the municipality's share shall be split
24 equally between the state and the county.

25 Section 4. The Department of Revenue shall
26 promulgate rules and forms necessary to implement the
27 provisions of this act.

1 Section 5. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 6. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor or its otherwise becoming law.