

1 HB17
2 171544-1
3 By Representatives Williams (JD), Williams (JW), Fridy, Faust,
4 Shiver, Nordgren, Johnson (K), Martin, Baker, Patterson,
5 Faulkner, Wingo, Whorton (R), Scott and Butler
6 RFD: Ways and Means General Fund
7 First Read: 08-SEP-15

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8 SYNOPSIS: To levy an excise tax on the receipts from
9 the sale of sexually-oriented materials and certain
10 charges related to sexually-explicit businesses.
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12 A BILL
13 TO BE ENTITLED
14 AN ACT
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16 To levy an excise tax on the receipts from the sale
17 of sexually-oriented materials and certain charges related to
18 sexually-explicit businesses.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

24 (2) Also under current law, it is illegal for any
25 person to distribute certain sexually-oriented materials and
26 services to a minor or to allow a minor to enter into certain

1 sexually-explicit businesses because such content is deemed
2 harmful to minors.

3 (3) Alcoholic beverages and tobacco products are
4 further regulated by the state through the levy of specific
5 excise taxes in addition to sales and use taxes; however, the
6 state does not levy an excise tax on the receipts from the
7 sale of sexually-oriented materials and services or certain
8 charges related to sexually-explicit businesses.

9 (b) The purpose of this act is to levy an excise tax
10 on the sale of sexually-oriented materials and certain charges
11 related to sexually-explicit businesses such that all products
12 and services whose acquisition or use by minors is prohibited
13 by the state in the same manner.

14 Section 2. As used in this act, the following terms
15 shall have the following meanings

16 (1) DEALER. A manufacturer, distributor, wholesaler,
17 or retailer engaged in the sale of sexually-oriented
18 materials.

19 (2) DEPARTMENT. The Department of Revenue.

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

21 (4) NUDE OR PARTIALLY DENUDED INDIVIDUAL. An
22 individual with any of the following less than completely and
23 opaquely covered:

24 a. Genitals;

25 b. The pubic region; or

26 c. A female breast below a point immediately above
27 the top of the areola.

1 (5) PERSON. Any individual and, except where
2 inappropriate, any partnership, firm, association, corporation
3 or other legal entity.

4 (6) SEXUAL CONDUCT. The term means:

5 a. Any act of sexual intercourse, masturbation,
6 urination, defecation, lewd exhibition of the genitals,
7 sado-masochistic abuse, bestiality, or the fondling of the sex
8 organs of animals; or

9 b. Any other physical contact with a person's
10 unclothed genitals, pubic area, buttocks, or the breast or
11 breasts of a female, whether alone or between members of the
12 same or opposite sex or between a human and an animal, in an
13 act of sexual stimulation, gratification, or perversion.

14 (6) SEXUALLY-ORIENTED MATERIAL. Any book, magazine,
15 newspaper, printed or written matter, writing, description,
16 picture, drawing, animation, photograph, motion picture, film,
17 video tape, pictorial presentation, depiction, image,
18 electrical or electronic reproduction, broadcast,
19 transmission, video download, telephone communication, sound
20 recording, article, device, equipment, matter, oral
21 communication, depicting breast or genital nudity or sexual
22 conduct as defined herein.

23 (7) SEXUALLY-EXPLICIT BUSINESSES. A business at
24 which any nude or partially denuded individual, regardless of
25 whether the nude or partially denuded individual is an
26 employee of the sexually-explicit business or an independent
27 contractor, performs any of the following services:

- 1 a. Striptease, burlesque, or drag shows; or
- 2 b. Massages.

3 (8) TAXPAYER. Any person liable for the tax or taxes
4 under this act.

5 Section 3. (a) In addition to any other applicable
6 taxes, a 40 percent state excise tax on the gross receipts
7 resulting from:

8 (i) The sale or rental of sexually-oriented
9 material, the sale or rental of which is prohibited to a minor
10 as defined herein; and

11 (ii) Charges for admission to a sexually-explicit
12 business as defined in Section 2(7)a. and services received at
13 a sexually-explicit business as defined in Section 2(7)b.

14 (b) The tax levied by this section shall not apply
15 to motion pictures designated by the rating board for the
16 Motion Picture Association of America by the letter "R" for
17 restricted audiences, persons under 17 years of age not
18 admitted unless accompanied by parent or adult guardian, or
19 the designation "NC-17" for persons under 17 years of age not
20 admitted. In addition, this subsection shall not apply to: (1)
21 any contraceptive device or medication or (2) any medication
22 that is prescribed by a physician that is intended to enhance
23 sexual performance or sexual enjoyment.

24 (c) The tax levied by this section on
25 sexually-oriented materials shall be paid by the dealer when
26 the product is sold. The tax levied by this section on charges
27 at sexually-explicit businesses shall be collected by the

1 owner at the time services are provided. A person subject to
2 the tax imposed by this section shall file monthly returns and
3 remit the tax for the month to the department on or before the
4 twentieth (20th) day of the next month following the month in
5 which the sale was made. The return shall be made upon forms
6 prescribed and furnished by the department.

7 (d) All taxes collected by the department under
8 subdivision (a) for the benefit of the state shall be
9 deposited into the State General Fund.

10 (e) In addition to the tax levied pursuant to
11 subdivision (a) of this section, there is hereby levied an
12 additional excise tax of 10 percent of (i) the gross receipts
13 resulting from the sale or rental of sexually-oriented
14 material as defined herein; and (ii) charges for admission to
15 a sexually-explicit business as defined in Section 2(7)a. and
16 services received at a sexually-explicit business as defined
17 in Section 2(7)b. The tax shall be collected in the same
18 manner as the state excise tax. From the proceeds of this tax,
19 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 or the sexually-explicit business is
22 located. If the sale occurs or sexually-explicit business is
23 located in an unincorporated area the municipality's share
24 shall be split equally between the state and the county.

25 (f) The dealer and/or owner may retain 1 percent of
26 the total sales collected to cover the costs associated with
27 the collection and payment of the taxes to the department. No

1 administrative costs shall be allowed, nor any monies retained
2 by the dealer and/or owner from any taxes that are not paid
3 before becoming delinquent.

4 Section 4. The Department of Revenue shall
5 promulgate rules and forms necessary to implement the
6 provisions of this act.

7 Section 5. 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 which remains.

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