HB17

171544-1

By Representatives Williams (JD), Williams (JW), Fridy, Faust, Shiver, Nordgren, Johnson (K), Martin, Baker, Patterson, Faulkner, Wingo, Whorton (R), Scott and Butler

RFD: Ways and Means General Fund

First Read: 08-SEP-15
SYNOPSIS: To levy an excise tax on the receipts from
the sale of sexually-oriented materials and certain
charges related to sexually-explicit businesses.

A BILL
TO BE ENTITLED
AN ACT

To levy an excise tax on the receipts from the sale
of sexually-oriented materials and certain charges related to
sexually-explicit businesses.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) The Legislature finds that:

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

(2) Also under current law, it is illegal for any
person to distribute certain sexually-oriented materials and
services to a minor or to allow a minor to enter into certain
sexually-explicit businesses because such content is deemed harmful to minors.

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

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

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

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

(2) DEPARTMENT. The Department of Revenue.

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

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

    a. Genitals;
    b. The pubic region; or
    c. A female breast below a point immediately above the top of the areola.
(5) PERSON. Any individual and, except where inappropriate, any partnership, firm, association, corporation or other legal entity.

(6) SEXUAL CONDUCT. The term means:

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

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

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

(7) SEXUALLY-EXPLICIT BUSINESSES. A business at which any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually-explicit business or an independent contractor, performs any of the following services:
(a) Striptease, burlesque, or drag shows; or

(b) Massages.

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

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

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

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

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

(c) The tax levied by this section on sexually-oriented materials shall be paid by the dealer when the product is sold. The tax levied by this section on charges at sexually-explicit businesses shall be collected by the
owner at the time services are provided. A person subject to
the tax imposed by this section shall file monthly returns and
remit the tax for the month to the department on or before the
twentieth (20th) day of the next month following the month in
which the sale was made. The return shall be made upon forms
prescribed and furnished by the department.

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

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

(f) The dealer and/or owner may retain 1 percent of
the total sales collected to cover the costs associated with
the collection and payment of the taxes to the department. No
administrative costs shall be allowed, nor any monies retained by the dealer and/or owner from any taxes that are not paid before becoming delinquent.

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

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

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