

1 HB153
2 91952-2
3 By Representatives Williams, Mask, McCutcheon, Wood and
4 Sanderford
5 RFD: Education Appropriations
6 First Read: 05-FEB-08
7 PFD: 01/31/2008

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8 SYNOPSIS: Under existing law, there is no separate
9 tax levied on adult telephone conversations or the
10 sale of adult novelty items or visual pornography.

11 This bill would levy an excise tax, in
12 addition to the sale and use taxes, on the receipts
13 from an adult telephone conversation and the sale
14 of adult novelty items and visual pornography to be
15 paid by the dealer who first distributes the item,
16 and to provide for the collecting the tax.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To levy an excise tax on the proceeds from an adult
23 telephone conversation, to be paid by the business or company
24 that receives payment for the service and the sale of adult
25 novelty items, and visual pornography to be paid by the dealer
26 who distributes the item; and to provide for collecting this
27 tax.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. As used in this act, the following terms
3 shall have the following meanings:

4 (1) ADULT NOVELTY ITEMS. Sexually oriented
5 materials, devices, or paraphernalia that is sexually oriented
6 in nature regardless of how labeled or sold.

7 (2) ADULT TELEPHONE COMMUNICATION or PHONE SEX.
8 Sexually explicit conversation via the telephone between a
9 paying customer and a person who receives compensation for the
10 conversation.

11 (3) DEALER. A manufacturer, distributor, wholesaler,
12 or retailer engaged in the sale of visual pornography.

13 (4) DEPARTMENT. The Department of Revenue.

14 (5) OBSCENE. a. The average person, applying
15 contemporary community standards, would find that the
16 material, taken as a whole, appeals to the prurient interest.

17 b. The material depicts or describes, in a patently
18 offensive way, sexual conduct, actual or simulated, normal or
19 perverted; and

20 c. A reasonable person would find that the material,
21 taken as a whole, lacks serious literary, artistic, political
22 or scientific value.

23 (6) SEXUAL CONDUCT. a. Any act of sexual
24 intercourse, masturbation, urination, defecation, lewd
25 exhibition of the genitals, sado-masochistic abuse,
26 bestiality, or the fondling of the sex organs of animals.

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

6 (7) TAXPAYER. Any person liable for the taxes under
7 this act.

8 (8) VISUAL PORNOGRAPHY. Any visual depiction,
9 including any photograph, film, digital images, video,
10 picture, or computer image or computer-generated image or
11 picture, whether made or produced by electronic, mechanical,
12 or other means of sexually obscene conduct.

13 Section 2. There is levied a 30 percent excise tax
14 on the total charge for an adult telephone conversation and
15 the gross receipts resulting from the sale of adult novelty
16 items and visual pornography.

17 Section 3. (a) The tax levied by this act shall be
18 paid by the dealer when the product is sold. In the case of
19 adult telephone conversations, the tax shall be paid by the
20 individual, business, or company that receives payment for the
21 services.

22 (b) A person subject to the tax imposed by this act
23 shall file monthly returns and remit the tax for the month
24 with the department on or before the fifteenth day of the next
25 month following the month in which the sale was made.

26 (c) The returns shall be made upon forms prescribed
27 and furnished by the department.

1 Section 4. (a) All taxes collected by the department
2 under this act shall be deposited in the State Treasury.

3 (b) From the proceeds of the tax, the state shall
4 pay three percent of the total proceeds to the counties and
5 two percent of the total proceeds to the cities on a pro rata
6 basis based on population.

7 Section 5. Any taxpayer who violates any of the
8 provisions of this act may be restrained from continuing in
9 business, and the proper prosecution shall be instituted in
10 the name of the State of Alabama by the Attorney General, by
11 the counsel of the department, or, under their direction, by
12 any district attorney of the state until such person shall
13 have complied with the provisions of this act.

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