HB153

By Representatives Williams, Mask, McCutcheon, Wood and Sanderford

RFD: Education Appropriations

First Read: 05-FEB-08

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SYNOPSIS: Under existing law, there is no separate tax levied on adult telephone conversations or the sale of adult novelty items or visual pornography. This bill would levy an excise tax, in addition to the sale and use taxes, on the receipts from an adult telephone conversation and the sale of adult novelty items and visual pornography to be paid by the dealer who first distributes the item, and to provide for the collecting the tax.

A BILL
TO BE ENTITLED
AN ACT

To levy an excise tax on the proceeds from an adult telephone conversation, to be paid by the business or company that receives payment for the service and the sale of adult novelty items, and visual pornography to be paid by the dealer who distributes the item; and to provide for collecting this tax.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

(4) DEPARTMENT. The Department of Revenue.

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

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

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

(6) SEXUAL CONDUCT. 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.
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.

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

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

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

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

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

(c) The returns shall be made upon forms prescribed and furnished by the department.
Section 4. (a) All taxes collected by the department under this act shall be deposited in the State Treasury.

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

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

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.