HB39

170964-2

By Representatives Williams (JD), Johnson (K), Sessions, Harper, Sanderford, Clouse, Martin, McCutcheon, Wingo, Polizos, Williams (JW), Butler, Shiver, Faust, Nordgren, Chesteen, Brown, Beech, Sells, Fridy, Whorton (R), Patterson, Pettus, Ingram, Ball, Hubbard and McMillan

RFD: Ways and Means General Fund

First Read: 03-AUG-15
SYNOPSIS: This bill would levy an excise tax, in addition to the sales and use taxes, on the receipts from the sale of sexually-oriented materials.

A BILL

TO BE ENTITLED

AN ACT

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

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 to a minor any material which is harmful to minors, including certain sexually-oriented materials.
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 sexually-oriented materials.

The purpose of this act is to levy an excise tax on sexually-oriented materials such that all products whose acquisition by or sale to 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. PERSON. Any individual and, except where inappropriate, any partnership, firm, association, corporation or other legal entity.
5. 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) 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 the sale or rental of sexually-oriented material the sale or rental of which is prohibited to a minor as defined herein.

(b) The tax levied by this subsection 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 subsection shall be paid
by the dealer when the product is sold. A person subject to
the tax imposed by this subsection 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 this
subsection 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 the gross receipts
resulting from the sale or rental of sexually-oriented
material as defined herein. 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 and one-half of the proceeds to the
municipality in which the sale occurred. If the sale occurs in
an unincorporated area the municipality's share shall be split
equally between the state and the county.

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.