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8 SYNOPSIS: This bill would repeal various state taxes
9 and levy instead a comprehensive consumption tax.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To repeal the following provisions of the Code of
16 Alabama 1975: Chapter 18 of Title 40, Sections 40-27-1.1, and
17 40-31-1-through 40-31-4, regarding the income tax; Chapter 9F
18 of Title 40, regarding the tax credits for rehabilitation of
19 historic structures; Chapter 16 of Title 40, regarding the
20 financial institutions excise tax; Chapter 14 of Title 40,
21 regarding the corporation tax; Sections 40-14A-1 through
22 40-14A-2, 40-14A-21 through 40-14A-29, and 40-14A-41 through
23 40-14A-43, regarding the business privilege tax; Chapter 23 of
24 Title 40, regarding the sales and use and contractor's gross
25 receipts taxes; Sections 40-15-1 through 40-15-19, regarding
26 estate and gift tax; Sections 40-15A-1 through 40-15A-14,
27 regarding the generation-skipping transfer tax; Chapter 22 of

1 Title 40, regarding recording taxes; Sections 40-12-220
2 through 40-12-227, regarding the leasing and rental tax;
3 Chapter 31 of Title 40, regarding the facilitating business
4 rapid response to declared disasters act; Sections 40-21-80
5 through 40-21-107, regarding the utilities gross receipts tax
6 and utility service use tax; Sections 40-21-50 through
7 40-21-64, regarding the public utility license tax and
8 hydroelectric tax; Chapter 26 of Title 40, regarding transient
9 occupancy tax; and Chapter 4A, of Title 27, regarding
10 insurance premium taxes; Chapter 14 of Title 40, regarding
11 certified capital company insurance premium tax credits; to
12 repeal Section 40-2A-17, regarding the Alabama Taxpayer's Bill
13 of Rights; Section 40-2-25, regarding audits and examinations;
14 and to replace them with a broad-based consumption tax; to
15 also amend Sections 40-2A-4 and 40-2A-18, Code of Alabama
16 1975, regarding the Taxpayer's Bill of Rights.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Short Title. This act shall be known and
19 may be cited as the "Alabama Economic Freedom Act."

20 Section 2. Findings of the Alabama Legislature

21 (a) Findings Relating to Alabama Income Tax. The
22 Alabama Legislature finds that the Alabama income tax:

23 (1) retards economic growth and has reduced the
24 standard of living of the Alabama public;

25 (2) impedes the competitiveness of Alabama's
26 industry;

1 (3) reduces savings and investment in Alabama by
2 taxing income multiple times;

3 (4) slows the capital formation necessary for real
4 wages to steadily increase;

5 (5) impedes innovation and lowers productivity;

6 (6) imposes unacceptable and unnecessary
7 administrative and compliance costs on individual and business
8 taxpayers;

9 (7) is unfair and inequitable;

10 (8) unnecessarily intrudes upon the privacy and
11 civil rights of Alabama's citizens;

12 (9) hides the true cost of government by embedding
13 taxes in the costs of everything Alabamians buy;

14 (10) is not being complied with at satisfactory
15 levels and therefore raises the tax burden on law abiding
16 citizens; and

17 (11) impedes upward social mobility.

18 (b) Findings Relating to Existing Sales and Use Tax.
19 The Alabama Legislature finds that the Alabama sales and use
20 tax:

21 (1) has too many exceptions which are unfair,
22 increase complexity and distort the economy;

23 (2) taxes business inputs which results in a hidden
24 tax and reduces investment in Alabama; and

25 (3) has a disproportionately adverse impact on lower
26 income Alabama.

1 (c) Findings Relating to the Estate and Inheritance
2 Tax. The Alabama Legislature finds that the Alabama estate and
3 inheritance tax;

4 (1) forces family businesses and farms to be sold by
5 the family to pay such taxes;

6 (2) discourages capital formation and
7 entrepreneurship;

8 (3) fosters the continued dominance of large
9 enterprises over small family-owned companies and farms; and

10 (4) imposes unacceptably high tax planning costs on
11 small businesses and farms.

12 (d) Findings Relating to the Consumption Tax. The
13 Alabama Legislature finds further that a broad-based single
14 rate consumption tax on goods and services purchased for final
15 consumption:

16 (1) is simpler and more fair than the sales and use
17 tax in place;

18 (2) will promote savings and investment;

19 (3) will promote fairness;

20 (4) will promote economic growth;

21 (5) will raise the standard of living;

22 (6) will increase investment;

23 (7) will enhance productivity and competitiveness;

24 (8) will reduce administrative burdens on the

25 Alabama taxpayer;

26 (9) will improve upward social mobility;

27 (10) will exempt the poor from tax; and

1 (11) will respect the privacy interests and civil
2 rights of taxpayers.

3 Section 3. Effective January 1, 2022, the following
4 provisions of the Code of Alabama 1975 are hereby expressly
5 repealed:

6 Chapter 18 of Title 40, Sections 40-27-1.1, and
7 40-31-1 through 40-31-4, regarding the income tax; Chapter 9F
8 of Title 40, regarding the tax credits for rehabilitation of
9 historic structures; Chapter 16 of Title 40, regarding the
10 financial institutions excise tax; Chapter 14 of Title 40,
11 regarding the corporation tax; Sections 40-14A-1 through
12 40-14A-2, 40-14A-21 through 40-14A-29, and 40-14A-41 through
13 40-14A-43, regarding the business privilege tax; Sections
14 40-15-1 through 40-15-19, regarding estate and gift tax;
15 Sections 40-15A-1 through 40-15A-14, regarding the
16 generation-skipping transfer tax; Chapter 22 of Title 40,
17 regarding recording taxes; Sections 40-12-220 through
18 40-12-227, regarding the leasing and rental tax; Chapter 31 of
19 Title 40, regarding the facilitating business rapid response
20 to declared disasters act; Sections 40-21-80 through
21 40-21-107, regarding the utilities gross receipts tax and
22 utility service use tax; Sections 40-21-50 through 40-21-64,
23 regarding the public utility license tax and hydroelectric
24 tax; Chapter 26 of Title 40, regarding transient occupancy
25 tax; and Chapter 4A, of Title 27, regarding insurance premium
26 taxes; Chapter 15B of Title 40, regarding certified capital
27 company insurance premium tax credits; Section 40-2A-17,

1 regarding the Taxpayer's Bill of Rights; and 40-2-25,
2 regarding audits and examinations.

3 Section 4. Chapter 23 of Title 40, Code of Alabama
4 1975, regarding sales and use taxes, is repealed.

5 Section 5. Chapter 23A of Title 40, is added to the
6 Code of Alabama 1975, to read as follows:

7 §40-23A-1 Principles of interpretation

8 (a) In General. Any court, the Commissioner of
9 Revenue and his delegates, and any other authority shall
10 consider the purposes of this chapter (as set forth in
11 subsection (b)) as the primary aid in statutory construction.

12 (b) Purposes. The purposes of this chapter are as
13 follows:

14 (1) To raise revenue needed by the State of Alabama
15 in a manner consistent with the other purposes of this
16 chapter.

17 (2) To tax all consumption of goods and services in
18 Alabama once, without exception, but only once.

19 (3) To prevent double, multiple, or cascading
20 taxation.

21 (4) To simplify the tax law and reduce the
22 administration costs of, and the costs of compliance with, the
23 tax law.

24 (5) To provide for the administration of the tax law
25 in a manner that respects privacy, due process, individual
26 rights when interacting with the government, the presumption

1 of innocence in criminal proceedings, and the presumption of
2 lawful behavior in civil proceedings.

3 (c) Secondary Aids to Statutory Construction. As a
4 secondary aid in statutory construction, any court, the
5 commissioner and his delegates, and any other authority shall
6 consider;

7 (1) the common law canons of statutory construction;

8 (2) the meaning and construction of concepts and
9 terms used in Title 40 as in effect before the effective date
10 of this Act; and

11 (3) construe any ambiguities in this Act in favor of
12 reserving powers to the people.

13 (d) Resolution of Conflicts. Whenever Chapter 23A is
14 inconsistent with any other chapter of this title, Chapter 23A
15 shall govern with respect to the administration and collection
16 of the taxes imposed by Chapter 23A.

17 §40-23A-2 Definitions

18 (a) The following terms shall have the following
19 meanings for purposes of this chapter:

20 (1) AFFILIATED FIRMS. A firm is affiliated with
21 another if 1 firm owns 50 percent or more of;

22 a. the voting shares in a corporation, or

23 b. the capital interests of a business firm that is
24 not a corporation.

25 (2) COMMISSIONER. The individual appointed by the
26 Governor as state Commissioner of Revenue pursuant to section
27 40-2-40 and his or her delegates.

1 (3) DESIGNATED COMMERCIAL PRIVATE COURIER SERVICE. A
2 firm designated as such by the commissioner, upon application
3 of the firm, if the firm;

- 4 a. provides its services to the general public,
- 5 b. records electronically to its data base kept in
6 the regular course of its business the date on which an item
7 was given to such firm for delivery, and
- 8 c. has been operating for at least 1 year.

9 (4) EDUCATION AND TRAINING. Tuition for primary,
10 secondary, or postsecondary level education, and job-related
11 training courses. Such term does not include room, board,
12 sports activities, recreational activities, hobbies, games,
13 arts or crafts or cultural activities.

14 (5) GROSS PAYMENTS. Payments for taxable property or
15 services including taxes imposed by this chapter.

16 (6) INTANGIBLE PROPERTY.

17 a. IN GENERAL. Copyrights, trademarks, patents,
18 goodwill, financial instruments, securities, commercial paper,
19 debts, notes and bonds, and other property deemed intangible
20 at common law.

21 b. CERTAIN TYPES OF PROPERTY. Does not include
22 tangible personal property (or rents or leaseholds of any term
23 thereon), real property (or rents or leaseholds of any term
24 thereon) and computer software.

25 (7) PERSON. The definition contained in section
26 40-1-1(8).

1 (8) PRODUCE, PROVIDE, RENDER, OR SELL TAXABLE
2 PROPERTY OR SERVICES.

3 a. A taxable property or service is used to produce,
4 provide, render, or sell a taxable property or service if such
5 property or service is purchased by a person engaged in a
6 trade or business for the purpose of employing or using such
7 taxable property or service in the production, provision,
8 rendering, or sale of other taxable property or services in
9 the ordinary course of that trade or business.

10 b. Taxable property or services used in a trade or
11 business for the purpose of research, experimentation,
12 testing, and development shall be treated as used to produce,
13 provide, render, or sell taxable property or services.

14 c. Taxable property or services purchased by an
15 insurer on behalf of an insured shall be treated as used to
16 produce, provide, render, or sell taxable property or services
17 if the premium for the insurance contract giving rise to the
18 insurer's obligation was subject to tax pursuant to section
19 40-23A-71 (relating to financial intermediation services).

20 d. Education and training shall be treated as
21 services used to produce, provide, render, or sell taxable
22 property or services.

23 (9) REGISTERED SELLER. The term registered seller
24 means a person registered pursuant to section 40-23A-43.

25 (10) RESPONSIBLE OFFICERS AND PARTNERS. For purposes
26 of section 40-23A-45 (m), the term responsible officers and
27 partners means:

1 a. in the case of a corporation, any officer who is
2 the President, the Chief Executive Officer, a Vice-President,
3 the Secretary, the Treasurer, the Chief Financial Officer or
4 serves a similar function for the corporation;

5 b. in the case of a partnership, any partner other
6 than limited partners;

7 c. in the case of a limited liability company, any
8 officer serving the function of a corporate President or Chief
9 Executive Officer, Treasurer or Chief Financial Officer or
10 Secretary and any member actively engaged in the management of
11 the company.

12 (11) TAXABLE EMPLOYER.

13 a. The term taxable employer includes:

14 1. any household employing domestic servants, and

15 2. any government except for government enterprises
16 (as defined in §40-23A-64).

17 b. The term taxable employer does not include any
18 employer which is:

19 1. engaged in a trade or business,

20 2. a not-for-profit organization (as defined in
21 section 40-23A-66), or

22 c. a government enterprise (as defined in section
23 40-23A-64).

24 (12) CROSS REFERENCE. For rules relating to
25 collection and remittance of tax on wages by taxable
26 employers, see section 40-23A-5(b)(2).

1 (13) TAX INCLUSIVE FAIR MARKET VALUE. The fair
2 market value of taxable property or services plus the tax
3 imposed by this chapter.

4 (14) TAXABLE PROPERTY OR SERVICE.

5 a. GENERAL RULE. The term taxable property or
6 service means:

7 1. any property (including leaseholds of any term or
8 rents with respect to such property) but excluding

9 2. intangible property, and

10 3. used property, and

11 4. any service (including any financial
12 intermediation services as determined by section 40-23A-71).

13 b. SERVICE. For purposes of subparagraph (A), the
14 term service:

15 1. shall include any service performed by an
16 employee for which the employee is paid wages or a salary by a
17 taxable employer, and

18 2. shall not include any service performed by an
19 employee for which the employee is paid wages or a salary-

20 (i) by an employer in the regular course of the
21 employer's trade or business,

22 (ii) by an employer that is a not-for-profit
23 organization (as defined in section 40-23A-66),

24 (iii) by an employer that is a government enterprise
25 (as defined in section 40-23A-64), and

26 (iv) by taxable employers to employees directly
27 providing education and training.

1 (15) USED PROPERTY.

2 a. property on which the tax imposed by this chapter
3 has been collected and for which no credit has been allowed
4 under section 40-23A-22, 40-23A-23, or 40-23A-26, or

5 b. property that was held other than for a business
6 purpose (as defined in section 40-23A-4) on December 31, 2022.

7 (16) WAGES AND SALARY. The terms wages and salary
8 mean all compensation paid for employment service including
9 cash compensation, employee benefits, disability insurance, or
10 wage replacement insurance payments, unemployment compensation
11 insurance, workers' compensation insurance, and the fair
12 market value of any other consideration paid by an employer to
13 an employee in consideration for employment services rendered.

14 (b) Cross References.

15 (1) For the definition of business purposes, see
16 section 40-23A-4.

17 (2) For the definition of insurance contract, see
18 section 40-23A-26(e).

19 (3) For the definition of qualified family, see
20 section 40-23A-32.

21 (4) For the definition of monthly poverty level, see
22 section 40-23A-33.

23 (5) For the definition of large seller, see section
24 40-23A-42(e)(3).

25 (6) For the definition of hobby activities, see
26 section 40-23A-61.

1 (7) For the definition of gaming sponsor, section
2 40-23A-62(a).

3 (8) For the definition of a chance, see section
4 40-23A-62(b).

5 (9) For the definition of government enterprise, see
6 section 40-23A-64(b).

7 (10) For the definition of mixed use property, see
8 section 40-23A-65.

9 (11) For the definition of qualified not-for-profit
10 organization, see section 40-23A-66.

11 (12) For the definition of financial intermediation
12 services, see section §40-23A-71.

13 §40-23A-3 Imposition of consumption tax.

14 (a) In General. There is hereby imposed a tax on the
15 use or consumption in the State of Alabama of taxable property
16 or services.

17 (b) Rate. The rate of tax is eight and three one
18 hundredths percent of the gross payments for the taxable
19 property or service.

20 (c) Liability for Tax.

21 (1) IN GENERAL. The person using or consuming
22 taxable property or services in the State of Alabama is liable
23 for the tax imposed by this section, except as provided in
24 paragraph (2) of this subsection.

25 (2) EXCEPTION WHERE TAX PAID TO SELLER. A person
26 using or consuming a taxable property or service in the State
27 of Alabama is not liable for the tax imposed by this section

1 if the person pays the tax to a person selling the taxable
2 property or service and receives from such person a
3 purchaser's receipt within the meaning of section 40-23A-49.

4 §40-23A-4 Intermediate and out-of-state sales.

5 (a) In General. For purposes of this chapter

6 (1) BUSINESS PURPOSES. No tax shall be imposed under
7 section 40-23A-3 on any taxable property or service purchased
8 for a business purpose in a trade or business.

9 (2) INVESTMENT PURPOSE. No tax shall be imposed
10 under section 40-23A-3 on any taxable property or service
11 purchased for an investment purpose and held exclusively for
12 an investment purpose.

13 (b) Business Purposes. For purposes of this section,
14 the term purchased for a business purpose in a trade or
15 business means purchased by a person engaged in a trade or
16 business and used in that trade or business

17 (1) for resale,

18 (2) to produce, provide, render, or sell taxable
19 property or services, or

20 (3) in furtherance of other bona fide business
21 purposes.

22 (c) Investment Purposes. For purposes of this
23 section, the term purchased for an investment purpose means
24 property purchased exclusively for purposes of appreciation or
25 the production of income but not entailing more than minor
26 personal efforts.

1 §40-23A-5 Rules relating to collection and
2 remittance of tax.

3 (a) Liability for Collection and Remittance of the
4 Tax. Except as provided otherwise by this section, any tax
5 imposed by this chapter shall be collected and remitted by the
6 seller of taxable property or services (including financial
7 intermediation services).

8 (b) Tax To Be Remitted by Purchaser in Certain
9 Circumstances.

10 (1) IN GENERAL. In the case of taxable property or
11 services purchased outside of the State of Alabama and brought
12 into the State of Alabama for use or consumption in the State
13 of Alabama, the purchaser shall remit the tax imposed by
14 section 40-23A-3.

15 (2) CERTAIN WAGES OR SALARY. In the case of wages or
16 salary paid by a taxable employer which are taxable services,
17 the employer shall remit the tax imposed by section 40-23A-3.

18 (c) Conversion of Business or Out-of-State Property
19 or Services. Property or services purchased for a business
20 purpose in a trade or business, for an investment purpose or
21 for sale outside of the State of Alabama and sold untaxed
22 pursuant to section 40-23A-3 that is subsequently converted to
23 personal use in the State of Alabama shall be deemed purchased
24 at the time of conversion and shall be subject to the tax
25 imposed by section 40-23A-3 at the fair market value of the
26 converted property as of the date of conversion. The tax shall
27 be due as if the property had been sold at the fair market

1 value during the month of conversion. The person using or
2 consuming the converted property is liable for and shall remit
3 the tax.

4 (d) Barter Transactions. If gross payment for
5 taxable property or services is made in other than money, then
6 the person responsible for collecting and remitting the tax
7 shall remit the tax in money as if gross payment had been made
8 in money at the tax inclusive fair market value of the taxable
9 property or services purchased.

10 §40-23A-21 Credits and refunds.

11 (a) In General. Each person shall be allowed a
12 credit with respect to the taxes imposed by section 40-23A-13
13 for each month in an amount equal to the sum of:

14 (1) such person's business use conversion credit
15 pursuant to section 40-23A-22 for such month,

16 (2) such person's intermediate and out-of-state
17 sales credit pursuant to section 40-23A-23 for such month,

18 (3) the administration credit pursuant to section
19 40-23A-24 for such month,

20 (4) the bad debt credit pursuant to section
21 40-23A-25 for such month,

22 (5) the insurance proceeds credit pursuant to
23 section 40-23A-26 for such month,

24 (6) the transitional inventory credit pursuant to
25 section 40-23A-82, and

26 (7) any amount paid in excess of the amount due.

1 (b) Credits Not Additive. Only one credit may be
2 taken with respect to any particular gross payment.

3 §40-23A-22 Business use conversion credit.

4 (a) In General. For purposes of section 40-23A-21, a
5 person's business use conversion credit for any month is the
6 aggregate of the amounts determined under subsection (b) with
7 respect to taxable property and services

8 (1) on which tax was imposed by this chapter (and
9 actually paid), and

10 (2) which commenced to be 95 percent or more used
11 during such month for business purposes (within the meaning of
12 section 40-23A-4).

13 (b) Amount of Credit. The amount determined under
14 this paragraph with respect to any taxable property or service
15 is the lesser of

16 (1) the product of

17 a. the rate imposed by section 40-23A-3, and

18 b. the quotient that is

19 1. the fair market value of the property or service
20 when its use is converted, divided by

21 2. the quantity that is one minus the tax rate
22 imposed by section 40-23A-3, or

23 (2) the amount of tax paid with respect to such
24 taxable property or service, including the amount, if any,
25 determined in accordance with section 40-23A-65 (relating to
26 mixed use property).

1 §40-23A-23 Intermediate and out-of-state sales
2 credit.

3 For purposes of section 40-23A-21, a person's
4 intermediate and out-of-state sales credit is the amount of
5 consumption tax paid on the purchase of any taxable property
6 or service purchased for

7 (1) a business purpose in a trade or business (as
8 defined in section 40-23A-4), or

9 (2) for use or consumption outside the State of
10 Alabama.

11 §40-23A-24 Administration credit.

12 (a) In General. Every person filing a timely monthly
13 report (with regard to extensions) in compliance with section
14 40-23A-42 shall be entitled to a taxpayer administrative
15 credit equal to the greater of

16 (1) \$200, or

17 (2) one-quarter of 1 percent of the tax remitted.

18 (b) Limitation. The credit allowed under this
19 section shall not exceed 20 percent of the tax due to be
20 remitted prior to the application of any credit or credits
21 permitted by section 40-23A-21.

22 §40-23A-25 Bad debt credit.

23 (a) Financial Intermediation Services. Any person
24 who has experienced a bad debt (other than unpaid invoices
25 within the meaning of subsection (b)) shall be entitled to a
26 credit equal to the product of

27 (1) the rate imposed by section 40-23A-3, and

1 (2) the quotient that is
2 a. the amount of the bad debt (as defined in section
3 40-23A-72), divided by
4 b. the quantity that is one minus the rate imposed
5 by section 40-23A-3.

6 (b) Unpaid Invoices. Any person electing the accrual
7 method pursuant to section 40-23A-44 that has with respect to
8 a transaction

9 (1) invoiced the tax imposed by section 40-23A-3,

10 (2) remitted the invoiced tax,

11 (3) actually delivered the taxable property or
12 performed the taxable services invoiced, and

13 (4) not been paid 180 days after date the invoice
14 was due to be paid, shall be entitled to a credit equal to the
15 amount of tax remitted and unpaid by the purchaser.

16 (c) Subsequent Payment. Any payment made with
17 respect to a transaction subsequent to a section 40-23A-25
18 credit being taken with respect to that transaction shall be
19 subject to tax in the month the payment was received as if a
20 tax inclusive sale of taxable property and services in the
21 amount of the payment had been made.

22 (d) Partial Payments. Partial payments shall be
23 treated as pro rata payments of the underlying obligation and
24 shall be allocated proportionately

25 (1) for fully taxable payments, between payment for
26 the taxable property and service and tax, and

1 (2) for partially taxable payments, among payment
2 for the taxable property and service, tax and other payment.

3 (e) Related Parties. The credit provided by this
4 section shall not be available with respect to sales made to
5 related parties. For purposes of this section, related party
6 means affiliated firms (as defined in section 40-23A-2(a)(1))
7 and family members.

8 §40-23A-26 Insurance proceeds credit.

9 (a) In General. A person receiving a payment from an
10 insurer by virtue of an insurance contract shall be entitled
11 to a credit in an amount determined by subsection (b), less
12 any amount paid to the insured by the insurer pursuant to
13 subsection (c), if the entire premium (except that portion
14 allocable to the investment account of the underlying policy)
15 for the insurance contract giving rise to the insurer's
16 obligation to make a payment to the insured was subject to the
17 tax imposed by this chapter and said tax was paid.

18 (b) Credit Amount. The amount of the credit shall be
19 the product of

20 (1) the rate imposed by section 40-23A-3, and

21 (2) the quotient that is

22 a. the amount of the payment made by the insurer to
23 the insured, divided by

24 b. the quantity that is one minus the rate imposed
25 by section 40-23A-3.

26 (c) Administrative Option. The credit determined in
27 accordance with subsection (b) shall be paid by the insurer to

1 the insured and the insurer shall be entitled to the credit in
2 lieu of the insured, except that the insurer may elect, in a
3 form prescribed by the commissioner, to not pay the credit and
4 require the insured to make application for the credit. In the
5 event of such election, the insurer shall provide to the
6 commissioner and the insured the name and tax identification
7 number of the insurer and of the insured and indicate the
8 proper amount of the credit.

9 (d) Coordination With Respect to Exemption. If
10 taxable property or services purchased by an insurer on behalf
11 of an insured are purchased free of tax by virtue of section
12 40-23A-2(a)(8)(C), then the credit provided by this section
13 shall not be available with respect to that purchase.

14 (e) Insurance Contract. For purposes of subsection
15 (a), the term insurance contract shall include a life
16 insurance contract, a health insurance contract, a property
17 and casualty loss insurance contract, a general liability
18 insurance contract, a marine insurance contract, a fire
19 insurance contract, an accident insurance contract, a
20 disability insurance contract, a long-term care insurance
21 contract, and an insurance contract that provides a
22 combination of these types of insurance.

23 §40-23A-27 Refunds.

24 (a) Registered Sellers. If a registered seller files
25 a monthly tax report with an overpayment, then, upon
26 application by the registered seller in a form prescribed by
27 the commissioner, the overpayment shown on the report shall be

1 refunded to the registered seller within 60 days of receipt of
2 said application. In the absence of such application, the
3 overpayment may be carried forward, without interest, by the
4 person entitled to the credit.

5 (b) Other Persons. If a person other than a
6 registered seller has an overpayment for any month, then, upon
7 application by the person in a form prescribed by the
8 commissioner, the credit balance due shall be refunded to the
9 person within 60 days of receipt of said application.

10 (c) Interest. No interest shall be paid on any
11 balance due from the commissioner under this subsection for
12 any month if such balance due is paid within 60 days after the
13 application for refund is received. Balances due not paid
14 within 60 days after the application for refund is received
15 shall bear interest from the date of application. Interest
16 shall be paid at the Federal short-term rate (as defined in
17 section 40-23A-50).

18 §40-23A-31 Family consumption allowance.

19 Each qualified family shall be eligible to receive a
20 consumption tax rebate each month. The consumption tax rebate
21 shall be in an amount equal to the product of:

- 22 (1) the rate of tax imposed by section 40-23A-3, and
- 23 (2) the monthly poverty level.

24 §40-23A-32 qualified family.

25 (a) General Rule. For purposes of this chapter, the
26 term qualified family shall mean one or more family members
27 sharing a common residence. All family members sharing a

1 common residence shall be considered as part of 1 qualified
2 family.

3 (b) Family Size Determination.

4 (1) IN GENERAL. To determine the size of a qualified
5 family for purposes of this chapter, family members shall mean

6 a. an individual,

7 b. the individual's spouse,

8 c. all lineal ancestors and descendants of said
9 individual (and such individual's spouse),

10 d. all legally adopted children of such individual
11 (and such individual's spouse), and

12 e. all children under legal guardianship of such
13 individual (or such individual's spouse).

14 (2) IDENTIFICATION REQUIREMENTS. In order for a
15 person to be counted as a member of the family for purposes of
16 determining the size of the qualified family, such person must

17 a. have a bona fide Social Security number; and

18 b. be a lawful resident of both

19 1. the United States, and

20 2. the State of Alabama.

21 (c) Children Living Away From Home.

22 (1) STUDENTS LIVING AWAY FROM HOME. Any person who
23 was a registered student during not fewer than 5 months in a
24 calendar year while living away from the common residence of a
25 qualified family but who receives over 50 percent of such
26 person's support during a calendar year from members of the
27 qualified family shall be included as part of the family unit

1 whose members provided said support for purposes of this
2 chapter.

3 (2) CHILDREN OF DIVORCED OR SEPARATED PARENTS. If a
4 child's parents are divorced or legally separated, a child for
5 purposes of this chapter shall be treated as part of the
6 qualified family of the custodial parent. In cases of joint
7 custody, the custodial parent for purposes of this chapter
8 shall be the parent that has custody of the child for more
9 than one-half of the time during a given calendar year. A
10 parent entitled to be treated as the custodial parent pursuant
11 to this paragraph may release this claim to the other parent
12 if said release is in writing.

13 (d) Annual Registration. In order to receive the
14 family consumption allowance provided by section 40-23A-31, a
15 qualified family must register with the commissioner in a form
16 prescribed by the commissioner. The annual registration form
17 shall provide:

18 (1) the name of each family member who shared the
19 qualified family's residence on the family determination date,

20 (2) the Social Security number of each family member
21 on the family determination date who shared the qualified
22 family's residence on the family determination date,

23 (3) the family member or family members to whom the
24 family consumption allowance should be paid,

25 (4) a certification that all listed family members
26 are lawful residents of the United States,

1 (5) a certification that all listed family members
2 are lawful residents of Alabama,

3 (6) a certification that all family members sharing
4 the common residence are listed,

5 (7) a certification that no family members were
6 incarcerated on the family determination date (within the
7 meaning of subsection (1)), and

8 (8) the address of the qualified family. Said
9 registration shall be signed by all members of the qualified
10 family that have attained the age of 21 years as of the date
11 of filing.

12 (e) Registration Not Mandatory. Registration is not
13 mandatory for any qualified family.

14 (f) Effect of Failure To Provide Annual
15 Registration. Any qualified family that fails to register in
16 accordance with this section within 30 days of the family
17 determination date, shall cease receiving the monthly family
18 consumption allowance in the month beginning 90 days after the
19 family determination date.

20 (g) Effect of Curing Failure To Provide Annual
21 Registration. Any qualified family that failed to timely make
22 its annual registration in accordance with this section but
23 subsequently cures its failure to register, shall be entitled
24 to up to 6 months of lapsed consumption tax rebate payments.
25 No interest on lapsed payment amount shall be paid.

1 (h) Effective Date of Annual Registrations. Annual
2 registrations shall take effect for the month beginning 90
3 days after the family registration date.

4 (i) Effective Date of Revised Registrations. A
5 revised registration made pursuant to section 40-23A-35 shall
6 take effect for the first month beginning 60 days after the
7 revised registration was filed. The existing registration
8 shall remain in effect until the effective date of the revised
9 registration.

10 (j) Determination of Registration Filing Date. An
11 annual or revised registration shall be deemed filed when

12 (1) deposited in the United States mail, postage
13 prepaid, to the designated address of the Department of
14 Revenue;

15 (2) delivered and accepted at the designated offices
16 of the Department of Revenue; or

17 (3) provided to a designated commercial private
18 courier service for delivery within 2 days to the commissioner
19 at the designated address of the Department of Revenue.

20 (k) Proposed Registration To Be Provided. Thirty or
21 more days before the family registration date, the
22 commissioner shall mail to the address shown on the most
23 recent rebate registration or change of address notice filed
24 pursuant to section 40-23A-35(d) a proposed registration that
25 may be simply signed by the appropriate family members if
26 family circumstances have not changed.

1 (1) Incarcerated Individuals. An individual shall
2 not be eligible under this chapter to be included as a member
3 of any qualified family if that individual

4 (1) is incarcerated in a local, State, or Federal
5 jail, prison, mental hospital, or other institution on the
6 family determination date, and

7 (2) is scheduled to be incarcerated for 6 months or
8 more in the 12-month period following the effective date of
9 the annual registration or the revised registration of said
10 qualified family.

11 (m) Family Determination Date. The family
12 determination date is a date assigned to each family by the
13 commissioner for purposes of determining qualified family size
14 and other information necessary for the administration of this
15 chapter. The commissioner shall promulgate regulations
16 regarding the issuance of family determination dates. In the
17 absence of any regulations, the family determination date for
18 all families shall be October 1. The commissioner may assign
19 family determination dates for administrative convenience.
20 Permissible means of assigning family determination dates
21 include a method based on the birth dates of family members.

22 (n) Cross Reference. For penalty for filing false
23 rebate claim, see section 40-23A-45(i).

24 §40-23A-33 Monthly poverty level.

25 (a) In General. The monthly poverty level for any
26 particular month shall be one-twelfth of the annual poverty

1 level. For purposes of this section the annual poverty level
2 shall be the sum of:

3 (1) the annual level determined by the Department of
4 Health and Human Services poverty guidelines required by
5 sections 652 and 673(2) of the Omnibus Reconciliation Act of
6 1981 for a particular family size, and

7 (2) in case of families that include a married
8 couple, the annual marriage penalty elimination amount.

9 (b) Annual Marriage Penalty Elimination Amount. The
10 annual marriage penalty elimination amount shall be the amount
11 that is:

12 (1) the amount that is two times the annual level
13 determined by the Department of Health and Human Services
14 poverty guidelines required by sections 652 and 673(2) of the
15 Omnibus Reconciliation Act of 1981 for a family of one, less

16 (2) the annual level determined by the Department of
17 Health and Human Services poverty guidelines required by
18 sections 652 and 673(2) of the Omnibus Reconciliation Act of
19 1981 for a family of two.

20 §40-23A-34 Rebate mechanism.

21 (a) General Rule. The Department of Revenue shall
22 provide a monthly consumption tax rebate to duly registered
23 qualified families in an amount determined in accordance with
24 Section 40-23A-31.

25 (b) Persons Receiving Rebate. The payments shall be
26 made to the persons designated by the qualifying family in the
27 annual or revised registration for each qualified family in

1 effect with respect to the month for which payment is being
2 made. Payments may only be made to persons 18 years or older.
3 If more than 1 person is designated in a registration to
4 receive the rebate, then the rebate payment shall be divided
5 evenly between or among those persons designated.

6 (c) When Rebates Mailed. Rebates shall be mailed on
7 or before the first business day of the month for which the
8 rebate is being provided.

9 (d) Smartcards and Direct Electronic Deposit
10 Permissible. The commissioner may provide rebates in the form
11 of smartcards that carry cash balances in their memory for use
12 in making purchases at retail establishments or by direct
13 electronic deposit.

14 §40-23A-35 Change in family circumstances.

15 (a) General Rule. In the absence of the filing of a
16 revised registration in accordance with this chapter, the
17 common residence of the qualified family, marital status and
18 number of persons in a qualified family on the family
19 registration date shall govern determinations required to be
20 made under this chapter for purposes of the following calendar
21 year.

22 (b) No Double Counting. In no event shall any person
23 be considered part of more than 1 qualified family.

24 (c) Revised Registration Permissible. A qualified
25 family may file a revised registration for purposes of section
26 40-23A-32(d) to reflect a change in family circumstances. A
27 revised registration form shall provide

1 (1) the name of each family member who shared the
2 qualified family's residence on the filing date of the revised
3 registration,

4 (2) the Social Security number of each family member
5 who shared the qualified family's residence on the filing date
6 of the revised registration,

7 (3) the family member or family members to whom the
8 family consumption allowance should be paid,

9 (4) a certification that all listed family members
10 are lawful residents of the United States,

11 (5) a certification that all listed family members
12 are lawful residents of the State of Alabama,

13 (6) a certification that all family members sharing
14 the common residence are listed,

15 (7) a certification that no family members were
16 incarcerated on the family determination date (within the
17 meaning of section 40-23A-32(M)), and

18 (8) the address of the qualified family. Said
19 revised registration shall be signed by all members of the
20 qualified family that have attained the age of 21 years as of
21 the filing date of the revised registration.

22 (d) Change of Address. A change of address for a
23 qualified family may be filed with the commissioner at any
24 time and shall not constitute a revised registration.

25 (e) Revised Registration Not Mandatory. Revised
26 registrations reflecting changes in family status are not
27 mandatory.

1 §40-23A-41 Destination determination.

2 Destination Generally. The tax imposed by this
3 chapter is a destination principle tax. This section shall
4 govern for purposes of determining whether the destination of
5 taxable property and services is within or without of the
6 State of Alabama.

7 (a) Tangible Personal Property. Except as provided
8 in subsection (g) (relating to certain leases), the destination
9 of tangible personal property shall be the State or territory
10 in which the property was first delivered to the purchaser
11 (including agents and authorized representatives).

12 (b) Real Property. The destination of real property,
13 or rents or leaseholds on real property, shall be the State or
14 territory in which the real property is located.

15 (c) Other Property. The destination of any other
16 taxable property shall be the residence of the purchaser.

17 (d) Services.

18 (1) GENERAL RULE. The destination of services shall
19 be the State or territory in which the use or consumption of
20 the services occurred. Allocation of service invoices relating
21 to more than one jurisdiction shall be on the basis of time or
22 another method determined by regulation.

23 (2) TELECOMMUNICATIONS SERVICES. The destination of
24 telecommunications services shall be the residence of the
25 purchaser. Telecommunications services include telephone,
26 telegraph, beeper, radio, cable television, satellite, and
27 computer on-line or network services.

1 (3) TRANSPORTATION SERVICES. For transportation
2 services where all of the final destinations are within the
3 State of Alabama, the destination of transportation services
4 shall be the State of Alabama. For transportation services
5 where the final destination or origin of the trip is without
6 the State of Alabama, the service amount shall be deemed 50
7 percent attributable to the Alabama destination or origin.

8 (4) ELECTRICAL SERVICE. The destination of
9 electrical services shall be the residence of the purchaser.

10 (f) Financial Intermediation Services. The
11 destination of financial intermediation services shall be the
12 residence of the purchaser.

13 (g) Rents Paid for the Lease of Tangible Property.

14 (1) GENERAL RULE. Except as provided in paragraph
15 (2), the destination of rents paid for the lease of tangible
16 property and leaseholds on such property shall be where the
17 property is located while in use.

18 (2) LAND VEHICLES; AIRCRAFT, WATER CRAFT. The
19 destination of rental and lease payments on land vehicles,
20 aircraft and water craft shall be:

21 a. in the case of rentals and leases of a term of 1
22 month or less, the location where the land vehicle, aircraft,
23 or water craft was originally delivered to the renter or
24 lessee; and

25 b. in the case of rentals and leases of a term
26 greater than 1 month, the residence of the renter or lessee.

27 §40-23A-42 Monthly reports and payments.

1 (a) Tax Reports and Filing Dates.

2 (1) IN GENERAL. On or before the 15th day of each
3 month, each person who is:

4 a. liable to collect and remit the tax imposed by
5 this chapter by reason of section 40-23A-5(a), or

6 b. liable to pay tax imposed by this chapter which
7 is not collected pursuant to section 40-23A-5(a), shall submit
8 to the commissioner (in a form prescribed by the commissioner)
9 a report relating to the previous calendar month.

10 (2) CONTENTS OF REPORT. The report required under
11 paragraph (1) shall set forth

12 a. the gross payments (as defined in section
13 40-23A-2(a)(5)),

14 b. the tax collected under section 40-23A-3 in
15 connection with such payments,

16 c. the amount and type of any credit claimed, and

17 d. other information reasonably required by the
18 commissioner for the administration, collection, and
19 remittance of the tax imposed by this chapter.

20 (b) Tax Payments Date.

21 (1) GENERAL RULE. The tax imposed by this chapter
22 during any calendar month is due and shall be paid to the
23 Department of Revenue on or before the 15th day of the
24 succeeding month.

25 (2) CROSS REFERENCE. See subsection (e) relating to
26 remitting of separate segregated funds for sellers that are
27 not small sellers.

1 (c) Extensions for Filing Reports.

2 (1) AUTOMATIC EXTENSIONS FOR NOT MORE THAN 30 DAYS.

3 On application, an extension of not more than 30 days to file
4 reports under subsection (a) shall be automatically granted.

5 (2) OTHER EXTENSIONS. On application, extensions of
6 30 to 60 days to file such reports shall be liberally granted
7 by the commissioner for reasonable cause. Extensions greater
8 than 60 days may be granted by the commissioner to avoid
9 hardship.

10 (3) NO EXTENSION FOR PAYMENT OF TAXES.

11 Notwithstanding paragraphs (1) and (2), no extension shall be
12 granted with respect to the time for paying or remitting the
13 taxes under this chapter.

14 (d) Telephone Reporting of Violations. The
15 commissioner shall establish a system under which a violation
16 of this chapter can be brought to the attention of the
17 commissioner for investigation through the use of a toll-free
18 telephone number and otherwise.

19 (e) Separate Segregated Accounts.

20 (1) IN GENERAL. Any registered seller that is not a
21 small seller shall deposit all sales taxes collected pursuant
22 to this chapter in a particular week in a separate segregated
23 account maintained at a bank or other financial institution
24 within 3 business days of the end of such week. Said
25 registered seller shall also maintain in that account
26 sufficient funds to meet the bank or financial institution

1 minimum balance requirements, if any, and to pay account fees
2 and costs.

3 (2) SMALL SELLER. For purposes of this subsection, a
4 small seller is any person that has not collected \$5,000 or
5 more of the taxes imposed by this chapter in any of the
6 previous 12 months.

7 (3) LARGE SELLERS. Any seller that has collected
8 \$50,000 or more of the taxes imposed by this chapter in any of
9 the previous 12 months is a large seller. A large seller shall
10 remit to the commissioner the entire balance of deposited
11 taxes in its separate segregated account on the first business
12 day following the end of the calendar week. The commissioner
13 may by regulation require the electronic transfer of funds due
14 from large sellers.

15 (4) WEEK. For purposes of this subsection, the term
16 week shall mean the seven-day period ending on a Friday.

17 (f) Determination of Report Filing Date. A report
18 filed pursuant to subsection (a) shall be deemed filed when

19 (1) deposited in the United States mail, postage
20 prepaid, addressed to the designated office of the Department
21 of Revenue,

22 (2) delivered and accepted at the designated office
23 of the Department of Revenue,

24 (3) provided to a designated commercial private
25 courier service for delivery within two days to the designated
26 office of the Department of Revenue, or

27 (4) by other means permitted by the commissioner.

1 (g) Security Requirements. A large seller (within
2 the meaning of subsection (e) (3)) shall be required to provide
3 security in an amount equal to the greater of \$100,000 or one
4 and one-half times the seller's average monthly tax liability
5 during the previous 6 calendar months. Security may be a cash
6 bond, a bond from a surety company approved by the
7 commissioner, a certificate of deposit, or a State or United
8 States Treasury bond. A bond qualifying under this subsection
9 must be a continuing instrument for each calendar year (or
10 portion thereof) that the bond is in effect. The bond must
11 remain in effect until the surety or sureties are released and
12 discharged. Failure to provide security in accordance with
13 this section shall result in revocation of the seller's
14 section 40-23A-43 registration. If a person who has provided
15 security pursuant to this subsection

16 (1) fails to pay an amount indicated in a final
17 notice (within the meaning of section 40-23A-56(d)) of an
18 amount due under this chapter,

19 (2) no Taxpayer Assistance Order is in effect
20 relating to the amount due,

21 (3) either the time for filing an appeal pursuant to
22 section 40-23A-54 has passed or the appeal was denied, and

23 (4) the amount due is not being litigated in any
24 judicial forum, then the security or part of the security, as
25 the case may be, may be forfeited in favor of the commissioner
26 to the extent of such tax due (plus interest if any).

1 (h) Rewards Program. The commissioner is authorized
2 to maintain a program of awards wherein individuals that
3 assist the commissioner in discovering or prosecuting tax
4 fraud may be remunerated.

5 §40-23A-43 Registration.

6 (a) In General. Any person liable to collect and
7 remit taxes pursuant to section 40-23A-5 (a) who is engaged in
8 a trade or business shall register as a seller with the
9 commissioner.

10 (b) Affiliated Firms. Affiliated firms shall be
11 treated as 1 person for purposes of this section. Affiliated
12 firms may elect, upon giving notice to the commissioner in a
13 form prescribed by the commissioner, to treat separate firms
14 as separate persons for purposes of this chapter.

15 (c) Designation of Tax Matters Person. Every person
16 registered pursuant to subsection (a) shall designate a tax
17 matters person who shall be an individual whom the
18 commissioner may contact regarding tax matters. Each person
19 registered must provide notice of a change in the identity of
20 the tax matters person within 30 days of said change.

21 (d) Effect of Failure To Register. Any person that
22 is required to register and who fails to do so is prohibited
23 from selling taxable property or services. The commissioner
24 may bring an action seeking a temporary restraining order, an
25 injunction, or such other order as may be appropriate to
26 enforce this section.

27 §40-23A-44 Accounting.

1 (a) Cash Method To Be Used Generally. Registered
2 sellers and other persons shall report transactions using the
3 cash method of accounting unless an election to use the
4 accrual method of accounting is made pursuant to subsection
5 (b).

6 (b) Election To Use Accrual Method. A person may
7 elect with respect to a calendar year to remit taxes and
8 report transactions with respect to the month where a sale was
9 invoiced and accrued.

10 (c) Cross Reference. See section 40-23A-25 for rules
11 relating to bad debts for sellers electing the accrual method.

12 §40-23A-45 Penalties.

13 (a) Failure To Register. Each person who is required
14 to register pursuant to section 40-23A-43 but fails to do so
15 prior to notification by the commissioner shall be liable for
16 a penalty of \$500.

17 (b) Reckless or Willful Failure To Collect Tax.

18 (1) CIVIL PENALTY; FRAUD. Each person who is
19 required to and recklessly or willfully fails to collect taxes
20 imposed by this chapter shall be liable for a penalty equal to
21 the greater of \$500 or 20 percent of tax not collected.

22 (2) CRIMINAL PENALTY. Each person who is required to
23 and willfully fails as part of a trade or business to collect
24 taxes imposed by this chapter may be fined an amount up to the
25 amount determined in accordance with paragraph (1) or
26 imprisoned for a period of not more than one year or both.

1 (c) Reckless or Willful Assertion of Invalid
2 Exemption.

3 (1) CIVIL PENALTY; FRAUD. Each person who recklessly
4 or willfully asserts an invalid intermediate or out-of-state
5 sales exemption from the taxes imposed by this chapter shall
6 be liable for a penalty equal to the greater of \$500 or 20
7 percent of the tax not collected or remitted.

8 (2) CRIMINAL PENALTY. Each person who willfully
9 asserts an invalid intermediate or out-of-state sales
10 exemption from the taxes imposed by this chapter may be fined
11 an amount up to the amount determined in accordance with
12 paragraph (1) or imprisoned for a period of not more than one
13 year or both.

14 (d) Reckless or Willful Failure To Remit Tax
15 Collected.

16 (1) CIVIL PENALTY; FRAUD. Each person who is
17 required to and recklessly or willfully fails to remit taxes
18 imposed by this chapter and collected from purchasers shall be
19 liable for a penalty equal to the greater of \$1,000 or 50
20 percent of the tax not remitted.

21 (2) CRIMINAL PENALTY. Each person who willfully
22 fails to remit taxes imposed by this chapter and collected
23 from purchasers may be fined an amount up to the amount
24 determined in accordance with paragraph (1) or imprisoned for
25 a period of not more than two years or both.

26 (e) Reckless or Willful Failure To Pay Tax. Each
27 person who is required to and recklessly or willfully fails to

1 pay taxes imposed by this chapter shall be liable for a
2 penalty equal to the greater of \$500 or 20 percent of the tax
3 not paid.

4 (f) Penalty for Late Filing.

5 (1) IN GENERAL. In the case of a failure by any
6 person who is required to and fails to file a report required
7 by section 40-23A-42 on or before the due date (determined
8 with regard to any extension) for such report, such person
9 shall pay a penalty for each month or fraction thereof that
10 said report is late equal to the greater of

11 a. \$50, or

12 b. 0.5 percent of the gross payments required to be
13 shown on the report.

14 (2) INCREASED PENALTY ON RETURNS FILED AFTER WRITTEN
15 INQUIRY. The amount of the penalty under paragraph (1) shall
16 be doubled with respect to any report filed after a written
17 inquiry with respect to such report is received by the
18 taxpayer from commissioner.

19 (3) LIMITATION. The penalty imposed under this
20 subsection shall not exceed 12 percent.

21 (4) EXCEPTIONS.

22 a. REASONABLE CAUSE. No penalty shall be imposed
23 under this subsection with respect to any failure if it is
24 shown that such failure is due to reasonable cause.

25 b. OTHER WAIVER AUTHORITY. In addition to penalties
26 not imposed by reason of subparagraph (i), the commissioner,
27 on application, shall waive the penalty imposed by paragraph

1 (1) once per registered person per 24-month period. The
2 preceding sentence shall not apply to a penalty determined
3 under paragraph (2).

4 (g) Penalty for Willfully or Recklessly Accepting a
5 False Intermediate or Export Sales Certificate. A person who
6 willingly or recklessly accepts a false intermediate or
7 out-of-state sales certificate shall pay a penalty equal to 20
8 percent of the tax not collected by reason of said acceptance.

9 (h) Penalty for Late Remittance of Taxes.

10 (1) IN GENERAL. A person who is required to timely
11 remit taxes imposed by this chapter and remits taxes more than
12 1 month after such taxes are due shall pay a penalty equal to
13 1 percent per month (or fraction thereof) from the due date.

14 (2) LIMITATION. The penalty imposed under this
15 subsection shall not exceed 24 percent.

16 (3) REDUCTION FOR REASONABLE CAUSE. The penalty
17 imposed under paragraph (1) with respect to any late
18 remittance shall be reduced by half if it is shown that such
19 late remittance is due to reasonable cause.

20 (i) Penalty for Filing False Rebate Claim.

21 (1) CIVIL PENALTY; FRAUD. A person who willingly or
22 recklessly files a false claim for a family consumption
23 allowance rebate (within the meaning of 40-23A-31) shall

24 a. pay a penalty equal to the greater of \$500 or 50
25 percent of the claimed annual rebate amount not actually due,
26 and

1 b. repay any rebates received as a result of the
2 false rebate claim (together with interest).

3 (2) CRIMINAL PENALTY. A person who willingly files a
4 false claim for a family consumption allowance rebate (within
5 the meaning of 40-23A-31) may be fined an amount up to the
6 amount determined in accordance with paragraph (1) or
7 imprisoned for a period not more than one year or both.

8 (j) Penalty for Bad Check. If any check or money
9 order in payment of any amount receivable under this chapter
10 is not duly paid, in addition to other penalties provided by
11 law, the person who tendered such check shall pay a penalty
12 equal to the greater of:

13 (1) \$25, or

14 (2) two percent of the amount of such check.

15 (k) Penalty for Failure To Maintain a Separate
16 Segregated Account. Any person required to maintain a separate
17 segregated account pursuant to section 40-23A-42(e) that fails
18 to maintain such a separate segregated account shall pay a
19 penalty of \$500.

20 (1) Penalty for Failure To Deposit Collected Taxes
21 in a Separate Segregated Account. Any person required to
22 deposit collected taxes into a separate segregated account
23 maintained pursuant to section 40-23A-42(e) that fails to
24 timely deposit said taxes into the separate segregated account
25 shall pay a penalty equal to one percent of the amount
26 required to be deposited. The penalty imposed by the previous
27 sentence shall be tripled unless said taxes have been

1 deposited in the separate segregated account or remitted to
2 the commissioner within 16 days of the date said deposit was
3 due.

4 (m) Joint and Several Liability for Tax Matters
5 Person and Responsible Officers or Partners. The tax matters
6 person (designated pursuant to section 40-23A-43(c)) and
7 responsible officers or partners of a firm shall be jointly
8 and severally liable for the tax imposed by this chapter and
9 penalties imposed by this chapter.

10 (n) Right of Contribution. If more than 1 person is
11 liable with respect to any tax or penalty imposed by this
12 chapter, each person who paid such tax or penalty shall be
13 entitled to recover from other persons who are liable for such
14 tax or penalty an amount equal to the excess of the amount
15 paid by such person over such person's proportionate share of
16 the tax or penalty in accordance with regulations promulgated
17 by the commissioner. Said regulations may take culpability
18 into account when allocating liability for tax or penalty
19 among responsible officers or partners.

20 (o) Civil Penalties and Criminal Fines Not
21 Exclusive.

22 (1) CIVIL PENALTY. The fact that a civil penalty has
23 been imposed shall not prevent the imposition of a criminal
24 fine.

25 (2) CRIMINAL FINE. The fact that a criminal fine has
26 been imposed shall not prevent the imposition of a civil
27 penalty.

1 (p) Confidentiality. Any person who violates the
2 requirements relating to confidentiality of tax information
3 (as provided in section 40-23-56) may be fined up to \$10,000
4 or imprisoned for a period of not more than 1 year, or both.

5 §40-23A-46 Burden of persuasion and burden of
6 production.

7 In all disputes concerning taxes imposed by this
8 chapter, the person engaged in a dispute with the commissioner
9 shall have the burden of production of documents and records
10 but the commissioner shall have the burden of persuasion. In
11 all disputes concerning an exemption claimed by a purchaser,
12 if the seller has on file an intermediate sale or out-of-state
13 sale certificate from the purchaser and did not have
14 reasonable cause to believe that the certificate was
15 improperly provided by the purchaser with respect to such
16 purchase, then the burden of production of documents and
17 records relating to that exemption shall rest with the
18 purchaser and not with the seller.

19 §40-23A-47 Summons, examinations, audits, etc.

20 (a) Summons. Persons are subject to administrative
21 summons by the commissioner for records, documents, and
22 testimony required by the commissioner to accurately determine
23 liability for tax under this chapter. A summons shall be
24 served by the commissioner by an attested copy delivered in
25 hand to the person to whom it is directed or left at his last
26 known address. The summons shall describe with reasonable
27 certainty what is sought.

1 (b) Examinations and Audits. The commissioner has
2 the authority to conduct at a reasonable time and place
3 examinations and audits of persons who are or may be liable to
4 collect and remit tax imposed by this chapter and to examine
5 the books, papers, records, or other data of such persons
6 which may be relevant or material to the determination of tax
7 due.

8 (c) Limitation on Authority in Case of Referral. No
9 administrative summons may be issued by the commissioner and
10 no action be commenced to enforce an administrative summons
11 with respect to any person if a referral to the Attorney
12 General's Office is in effect with respect to such person
13 relating to a tax imposed by this chapter. Such referral is in
14 effect with respect to any person if the commissioner has
15 recommended to the Attorney General's Office that a grand jury
16 investigation of such person or a criminal prosecution of such
17 person that contemplates criminal sanctions under this
18 chapter. A referral shall be terminated when

19 (1) Attorney General's Office notifies commissioner
20 that he will not

21 a. prosecute such person for any offense connected
22 with the tax laws,

23 b. authorize a grand jury investigation of such
24 person with respect to such offense, or

25 c. continue such a grand jury investigation, or

1 (2) a final disposition has been made of any
2 criminal proceeding connected with tax laws against such
3 person.

4 §40-23A-48 Records.

5 Any person liable to remit taxes pursuant to this
6 chapter shall keep records (including a record of all section
7 40-23A-49 receipts provided, complete records of intermediate
8 and out-of-state sales, including purchaser's intermediate and
9 out-of-state sales certificates and tax number and the net of
10 tax amount of purchase) sufficient to determine the amounts
11 reported, collected, and remitted for a period of 6 years
12 after the latter of the filing of the report for which the
13 records formed the basis or when the report was due to be
14 filed. Any purchaser who purchased taxable property or
15 services but did not pay tax by reason of asserting an
16 intermediate and out-of-state sales exemption shall keep
17 records sufficient to determine whether said exemption was
18 valid for a period of seven years after the purchase of
19 taxable property or services.

20 §40-23A-49 Tax to be separately stated and charged.

21 (a) In General. For each purchase of taxable
22 property or services for which a tax is imposed by section
23 40-23A-3, the seller shall charge the tax imposed by section
24 40-23A-3 separately from the purchase price. For purchase of
25 taxable property or services for which a tax is imposed by
26 section 40-23A-3, the seller shall provide to the purchaser a
27 receipt for each transaction that includes:

- 1 (1) the property or services price exclusive of tax;
- 2 (2) the amount of tax paid;
- 3 (3) the property or service price inclusive of tax;
- 4 (4) the tax rate (the amount of tax paid (per
- 5 paragraph (2)) divided by the property or service price
- 6 inclusive of tax (per paragraph (3)));
- 7 (5) the date that the good or service was sold;
- 8 (6) the name of the vendor; and
- 9 (7) the vendor registration number.

10 (b) Vending Machine Exception. The requirements of
11 subsection (a) shall be inapplicable in the case of sales by
12 vending machines. Vending machines for purposes of this
13 subsection are machines

14 (1) that dispense taxable property in exchange for
15 coins or currency; and

16 (2) that sell no single item exceeding \$10 per unit
17 in price.

18 (c) Financial Intermediation Services Exception. The
19 requirements of subsection (a) shall be inapplicable in the
20 case of sales financial intermediation service. Receipts shall
21 be issued when the tax is imposed (in accordance with section
22 40-23-73 (relating to timing of tax on financial
23 intermediation services)).

24 §40-23A-50 Applicable interest rate.

25 (a) In General.

26 (1) FEDERAL SHORT-TERM RATE. In the case of a debt
27 instrument, investment, financing lease, or account with a

1 term of not over 3 years, the applicable interest rate is the
2 Federal short-term rate as determined by the United States
3 Secretary of the Treasury.

4 (2) FEDERAL MID-TERM RATE. In the case of a debt
5 instrument, investment, financing lease, or account with a
6 term of over three years but not over nine years, the
7 applicable interest rate is the Federal mid-term rate as
8 determined by the United States Secretary of the Treasury.

9 (3) FEDERAL LONG-TERM RATE. In the case of a debt
10 instrument, investment, financing lease, or account with a
11 term of over 9 years, the applicable interest rate is the
12 Federal long-term rate as determined by the United States
13 Secretary of the Treasury.

14 (b) Determination of Rates. The commissioner shall
15 publish the applicable rate monthly. Should the United States
16 Secretary of the Treasury cease to determine or to publish the
17 relevant federal interest rates, then the commissioner shall
18 determine and publish the applicable rate using the same
19 methodology used by the Secretary, as nearly as is practical,
20 prior to the Secretary discontinuing said determination or
21 publication.

22 (c) Interest on Past Due Taxes. The amount of
23 interest due to be paid by the taxpayer with respect to past
24 due taxes imposed by this chapter shall be determined by the
25 rate determined in accordance with section 40-23A-41.

26 §40-23A-51 Collections.

1 The proceeds of the tax paid pursuant to section
2 40-23A-3, shall be collected by the Department, which shall
3 retain the amount necessary to fund the administrative costs
4 of collecting and implementing the tax. The balance of the
5 proceeds shall be distributed as follows:

6 (1) Eighty percent to the State Treasury and
7 allocated:

8 a. Seventy-nine percent to the Education Trust Fund;

9 b. Eleven and one-half percent to the State General
10 Fund; and

11 c. Nine and one-half percent to be allocated and
12 apportioned among the entities and funds that receive proceeds
13 from any of the taxes being repealed under the provisions of
14 this act. The Department of Finance shall determine the
15 appropriate percentage of the proceeds to be allocated to each
16 of the entities and funds based on the amounts distributed to
17 the entities and funds from the taxes being repealed by this
18 act in the fiscal year concluding immediately prior to January
19 1, 2022.

20 (2) Twenty percent to the State Treasury and
21 allocated:

22 a. Forty percent to each county in the state on a
23 prorated basis according to population as determined in the
24 most recent federal census prior to distribution; and

25 b. Sixty percent to each municipality in the state
26 on a prorated basis according to population as determined in
27 the most recent federal census prior to distribution.

1 §40-23A-52 Power to levy, etc.

2 (a) In General. The commissioner may levy and seize
3 property, garnish wages or salary and file liens to collect
4 amounts due under this chapter, pursuant to enforcement of:

5 (1) a judgment duly rendered by a court of law;

6 (2) an amount due if the taxpayer has failed to
7 exercise his appeals rights under section 40-23A-54; or

8 (3) an amount due if the appeals process determined
9 that an amount remained due and the taxpayer has failed to
10 timely petition a court for relief.

11 (b) Exemption From Levy, Seizure, and Garnishments.
12 There shall be exempt from levy, seizure, and garnishment or
13 penalty in connection with any tax imposed by this chapter:

14 (1) wearing apparel, school books, fuel, provisions,
15 furniture, personal effects, tools of a trade or profession,
16 livestock in a household up to an aggregate value of \$15,000;
17 and

18 (2) monthly money income equal to 150 percent of the
19 monthly poverty level (as defined in section 40-23A-33).

20 (c) Liens To Be Timely Released. Subject to such
21 reasonable regulations as the commissioner may provide, any
22 lien imposed with respect to a tax imposed by this chapter
23 shall be released not later than 30 days after:

24 (1) the liability was satisfied or became
25 unenforceable; or

26 (2) a bond was accepted as security.

27 §40-23A-53 Taxpayer Advocate.

1 Cross Reference. See section 40-2A-4.

2 §40-23A-54 Appeals.

3 Cross Reference. See section 40-2B-2.

4 §40-23A-55 Attorneys' and accountancy fees.

5 In all disputes concerning taxes imposed by this
6 chapter, the person engaged in a dispute with the commissioner
7 shall be entitled to reasonable attorneys' fees, accountancy
8 fees, and other reasonable professional fees incurred in
9 direct relation to the dispute unless the commissioner
10 establishes that its position was substantially justified.

11 §40-23A-56 Taxpayer rights.

12 Cross Reference. See section 40-2A-4.

13 §40-23A-57 Installment agreements; compromises.

14 Cross Reference. See section 40-2A-4.

15 §40-23A-58 Bankruptcy.

16 No addition to tax shall be made under section
17 40-23A-45 with respect to a period during which a case is
18 pending under Title 11, United States Code (1) if such tax was
19 incurred by the estate and the failure occurred pursuant to an
20 order of the court finding probable insufficiency of funds of
21 the estate to pay administrative expenses; or (2) if (a) such
22 tax was incurred by the debtor before the earlier of the order
23 for relief or (in the involuntary case) the appointment of a
24 trustee; and (b) the petition was filed before the due date
25 prescribed by law (including extensions) for filing a return
26 of such tax, or the date for making the addition to tax occurs
27 on or after the date the petition was filed.

1 §40-23A-61 Hobby activities.

2 (a) Hobby Activities. Neither the exemption afforded
3 by section 40-23A-4 for neither intermediate sales nor the
4 credits available pursuant to section 40-23A-22 or section
5 40-23A-23 shall be available for any taxable property or
6 service purchased for use in an activity if that activity is
7 not engaged in for-profit.

8 (b) Status Deemed. If the activity has received
9 gross payments for the sale of taxable property or services
10 that exceed the sum of:

11 (1) taxable property and services purchased;

12 (2) wages and salary paid; and

13 (3) taxes (of any type) paid,

14 in two or more of the most recent 3 calendar years
15 during which it operated then the business activity shall be
16 conclusively deemed to be engaged in for profit.

17 §40-23A-62 Gaming activities.

18 (a) Registration. Any person selling one or more
19 chances is a gaming sponsor and shall register, in a form
20 prescribed by the commissioner, with the commissioner as a
21 gaming sponsor provided that a not-for-profit organization
22 (with the meaning of section 40-23A-66) that has gross
23 receipts from the sale of chances of less than \$5,000 during
24 any calendar year shall not be required to register.

25 (b) Chance Defined. For purposes of this section,
26 the term chance means a lottery ticket, a raffle ticket,
27 chips, other tokens, a bet or bets placed, a wager or wagers

1 placed, or any similar device where the purchase of the right
2 gives rise to an obligation by the gaming sponsor to pay upon
3 the occurrence of:

4 (1) a random or unpredictable event; or

5 (2) an event over which neither the gaming sponsor
6 nor the person purchasing the chance has control over the
7 outcome.

8 (c) Chances Not Taxable Property or Service.

9 Notwithstanding any other provision in this chapter, a chance
10 is not taxable property or services for purposes of section
11 40-23A-3.

12 (d) Tax on Gaming Services Imposed. A tax is hereby
13 imposed on the taxable gaming services of a gaming sponsor at
14 the same rate as the tax imposed by section 40-23A-3. This tax
15 shall be paid and remitted by the gaming sponsor. The tax
16 shall be remitted by the 15th day of each month with respect
17 to taxable gaming services during the previous calendar month.
18 A not-for-profit organization (with the meaning of section
19 40-23A-66) that has gross receipts from the sale of chances of
20 less than \$5,000 during any calendar year shall not be
21 required to remit the tax imposed by this section.

22 (e) Taxable Gaming Services Defined. For purposes of
23 this section, the term taxable gaming services means:

24 (1) gross receipts of the gaming sponsor from the
25 sale of chances, minus

26 (2) the sum of:

1 a. total gaming payoffs to chance purchasers (or
2 their designees); and

3 b. gaming specific taxes (other than the tax imposed
4 by this section) imposed by the Federal, State, or local
5 government.

6 §40-23A-63 Government Purchases.

7 (a) Government Purchases.

8 (1) PURCHASE BY STATE GOVERNMENTS AND THEIR
9 POLITICAL SUBDIVISIONS. Purchase by State governments and
10 their political subdivisions of taxable property and services
11 shall be subject to the tax imposed by §40-23A-3.

12 (b) Cross References. For purchases by government
13 enterprises see §40-23A-64.

14 §40-23A-64 Government Enterprises.

15 (a) Government Enterprises To Collect and Remit
16 Taxes on Sales. Nothing in this chapter shall be construed to
17 exempt any State or local governmental unit or political
18 subdivision operating a government enterprise from collecting
19 and remitting tax imposed by this chapter on any sale of
20 taxable property or services. Government enterprises shall
21 comply with all duties imposed by this chapter and shall be
22 liable for penalties and subject to enforcement action in the
23 same manner as private persons that are not government
24 enterprises.

25 (b) Government Enterprise. Any entity owned or
26 operated by a State or local governmental unit or political
27 subdivision that receives gross payments from private persons

1 is a government enterprise, except that a government-owned
2 entity shall not become a government enterprise for purposes
3 of this section unless in any quarter it has revenues from
4 selling taxable property or services that exceed \$2,500.

5 (c) Government Enterprises Intermediate Sales.

6 (1) IN GENERAL. Government enterprises shall not be
7 subject to tax on purchases that would not be subject to tax
8 pursuant to section 40-23A-4 if the government enterprise were
9 a private enterprise.

10 (2) EXCEPTION. Government enterprises may not use
11 the exemption afforded to serve as a conduit for tax-free
12 purchases by government units that would otherwise be subject
13 to taxation on purchases pursuant to section 40-23A-63.
14 Transfers of taxable property or services purchased exempt
15 from tax from a government enterprise to such government unit
16 shall be taxable.

17 (d) Separate Books of Account. Any government
18 enterprise must maintain books of account, separate from the
19 nonenterprise government accounts, maintained in accordance
20 with generally accepted accounting principles.

21 (e) Trade or Business. A government enterprise shall
22 be treated as a trade or business for purposes of this
23 chapter.

24 (f) Enterprise Subsidies Constitute Taxable
25 Purchase. A transfer of funds to a government enterprise by a
26 government entity without full consideration shall constitute
27 a taxable government purchase with the meaning of section

1 40-23A-63 to the extent that the transfer of funds exceeds the
2 fair market value of the consideration.

3 §40-23A-65 Mixed use property.

4 (a) Mixed Use Property or Service.

5 (1) MIXED USE PROPERTY OR SERVICE DEFINED. For
6 purposes of this section, the term mixed use property or
7 service is a taxable property or taxable service used for both
8 taxable use or consumption and for a purpose that would not be
9 subject to tax pursuant to section 40-23A-4(a) (1).

10 (2) TAXABLE THRESHOLD. Mixed use property or service
11 shall be subject to tax notwithstanding section 40-23A-4(a) (1)
12 unless such property or service is used more than 95 percent
13 for purposes that would give rise to an exemption pursuant to
14 section 40-23A-4(a) (1) during each calendar year (or portions
15 thereof) it is owned.

16 (3) MIXED USE PROPERTY OR SERVICES CREDIT. A person
17 registered pursuant to section 40-23A-43 is entitled to a
18 business use conversion credit (pursuant to section 40-23A-22)
19 equal to the product of

- 20 a. the mixed use property amount;
21 b. the business use ratio; and
22 c. the rate of tax imposed by section 40-23A-3.

23 (4) MIXED USE PROPERTY AMOUNT. The mixed use
24 property amount for each month (or fraction thereof) in which
25 the property was owned shall be:

1 a. one-three-hundred-sixtieth of the gross payments
2 for real property for 360 months or until the property is
3 sold;

4 b. one-eighty-fourth of the gross payments for
5 tangible personal property for 84 months or until the property
6 is sold;

7 c. one-sixtieth of the gross payments for vehicles
8 for 60 months or until the property is sold; or

9 d. for other types of taxable property or services,
10 a reasonable amount or in accordance with regulations
11 prescribed by the commissioner.

12 (5) BUSINESS USE RATIO. For purposes of this
13 section, the term business use ratio means the ratio of
14 business use to total use for a particular calendar month (or
15 portion thereof if the property was owned for only part of
16 said calendar month). For vehicles, the business use ratio
17 will be the ratio of business purpose miles to total miles in
18 a particular calendar month. For real property, the business
19 use ratio is the ratio of floor space used primarily for
20 business purposes to total floor space in a particular
21 calendar month. For tangible personal property (except for
22 vehicles), the business use ratio is the ratio of total time
23 used for business purposes to total time used in a particular
24 calendar year. For other property or services, the business
25 ratio shall be calculated using a reasonable method.
26 Reasonable records must be maintained to support a person's
27 business use of the mixed use property or service.

1 (b) Timing of Business Use Conversion Credit Arising
2 Out of Ownership of Mixed Use Property. A person entitled to a
3 credit pursuant to subsection (a) (3) arising out of the
4 ownership of mixed use property must account for the mixed use
5 on a calendar year basis, and may file for the credit with
6 respect to mixed use property in any month following the
7 calendar year giving rise to the credit.

8 (c) Cross Reference. For business use conversion
9 credit, see section 40-23A-22.

10 §40-23A-66 Not-for-Profit organizations.

11 (a) Not-for-Profit Organizations. Dues,
12 contributions, and similar payments to qualified
13 not-for-profit organizations shall not be considered gross
14 payments for taxable property or services for purposes of this
15 chapter.

16 (b) Definition. For purposes of this section, the
17 term qualified not-for-profit organization means a
18 not-for-profit organization organized and operated exclusively

19 (1) for religious, charitable, scientific, testing
20 for public safety, literary, or educational purposes;

21 (2) as civic leagues or social welfare
22 organizations;

23 (3) as labor, agricultural, or horticultural
24 organizations;

25 (4) as chambers of commerce, business leagues, or
26 trade associations; or

1 (5) as fraternal beneficiary societies, orders, or
2 associations; no part of the net earnings of which inures to
3 the benefit of any private shareholder or individual.

4 (c) Qualification Certificates. Upon application in
5 a form prescribed by the commissioner, the commissioner shall
6 provide qualification certificates to qualified not-for-profit
7 organizations.

8 (d) Taxable Transactions. If a qualified
9 not-for-profit organization provides taxable property or
10 services in connection with contributions, dues, or similar
11 payments to the organization, then it shall be required to
12 treat the provision of said taxable property or services as a
13 purchase taxable pursuant to this chapter at the fair market
14 value of said taxable property or services.

15 (e) Exemptions. Taxable property and services
16 purchased by a qualified not-for-profit organization shall be
17 eligible for exemption if purchased for resale or in
18 connection with a trade or business operated by the qualified
19 not-for-profit organization.

20 §40-23A-71 Determination of financial intermediation
21 services amount.

22 (a) Financial Intermediation Services. For purposes
23 of this chapter

24 (1) IN GENERAL. The term financial intermediation
25 services means the sum of

26 a. explicitly charged fees for financial
27 intermediation services, and

1 b. implicitly charged fees for financial
2 intermediation services.

3 (2) EXPLICITLY CHARGED FEES FOR FINANCIAL
4 INTERMEDIATION SERVICES. The term explicitly charged fees for
5 financial intermediation services includes

6 a. brokerage fees;

7 b. explicitly stated banking, loan origination,
8 processing, documentation, credit check fees, or other similar
9 fees;

10 c. safe-deposit box fees;

11 d. insurance premiums, to the extent such premiums
12 are not allocable to the investment account of the underlying
13 insurance policy;

14 e. trustees' fees; and

15 f. other financial services fees (including mutual
16 fund management, sales, and exit fees).

17 (3) IMPLICITLY CHARGED FEES FOR FINANCIAL
18 INTERMEDIATION SERVICES.

19 a. IN GENERAL. The term implicitly charged fees for
20 financial intermediation services includes the gross imputed
21 amount in relation to any underlying interest-bearing
22 investment, account, or debt.

23 b. GROSS IMPUTED AMOUNT. For purposes of
24 subparagraph (ii), the term gross imputed amount means

25 1. with respect to any underlying interest-bearing
26 investment or account, the product of

1 (i) the excess (if any) of the basic interest rate
2 (as defined in section 40-23A-75) over the rate paid on such
3 investment; and

4 (ii) the amount of the investment or account; and
5 2. with respect to any underlying interest-bearing
6 debt, the product of

7 (i) the excess (if any) of the rate paid on such
8 debt over the basic interest rate (as defined in section
9 40-23A-75); and

10 (ii) the amount of the debt.

11 (b) Seller of Financial Intermediation Services. For
12 purposes of section 40-23A-5, the seller of financial
13 intermediation services shall be:

14 (1) in the case of explicitly charged fees for
15 financial intermediation services, the person who receives the
16 gross payments for the charged financial intermediation
17 services;

18 (2) in the case of implicitly charged fees for
19 financial intermediation services with respect to any
20 underlying interest-bearing investment or account, the person
21 making the interest payments on the interest-bearing
22 investment or account; and

23 (3) in the case of implicitly charged fees for
24 financial intermediation services with respect to any
25 interest-bearing debt, the person receiving the interest
26 payments on the interest-bearing debt.

27 §40-23A-72 Bad debts.

1 (a) In General. For purposes of section 40-23A-25, a
2 bad debt shall be a business debt that becomes wholly or
3 partially worthless to the payee.

4 (b) Business Loan. For purposes of subsection (a), a
5 business loan or debt is a bona fide loan or debt made for a
6 business purpose that both parties intended be repaid.

7 (c) Determination of Worthlessness.

8 (1) IN GENERAL. No loan or debt shall be considered
9 wholly or partially worthless unless it has been in arrears
10 for 180 days or more, except that if a debt is discharged
11 wholly or partially in bankruptcy before 180 days has elapsed,
12 then it shall be deemed wholly or partially worthless on the
13 date of discharge.

14 (2) DETERMINATION BY HOLDER. A loan or debt that has
15 been in arrears for 180 days or more may be deemed wholly or
16 partially worthless by the holder unless a payment schedule
17 has been entered into between the debtor and the lender.

18 (d) Cross Reference. See section 40-23A-25 for tax
19 on subsequent payments.

20 §40-23A-73 Timing of tax on financial intermediation
21 services.

22 The tax on financial intermediation services
23 provided by section 40-23A-71 with respect to an underlying
24 investment account or debt shall be imposed and collected with
25 the same frequency that statements are rendered by the
26 financial institution in connection with the investment
27 account or debt but not less frequently than quarterly.

1 §40-23A-74 Financing leases.

2 (a) Definition. For purposes of this section, the
3 term financing lease means any lease under which the lessee
4 has the right to acquire the property for 50 percent or less
5 of its fair market value at the end of the lease term.

6 (b) General Rule. Financing leases shall be taxed in
7 the method set forth in this section.

8 (c) Determination of Principal and Interest
9 Components of Financing Lease. The Commissioner shall
10 promulgate rules for disaggregating the principal and interest
11 components of a financing lease. The principal amount shall be
12 determined to the extent possible by examination of the
13 contemporaneous sales price or prices of property the same or
14 similar as the leased property.

15 (d) Alternative Method. In the event that
16 contemporaneous sales prices or property the same or similar
17 as the leased property are not available, the principal and
18 interest components of a financing lease shall be
19 disaggregated using the applicable interest rate (as defined
20 in section 40-23A-50) plus 4 percent.

21 (e) Principal Component. The principal component of
22 the financing lease shall be subject to tax as if a purchase
23 in the amount of the principal component had been made on the
24 day on which said lease was executed.

25 (f) Interest Component. The financial intermediation
26 services amount with respect to the interest component of the
27 financing lease shall be subject to tax under this chapter.

1 (g) Coordination. If the principal component and
2 financial intermediation services amount with respect to the
3 interest component of a lease have been taxed pursuant to this
4 section, then the gross lease or rental payments shall not be
5 subject to additional tax.

6 §40-23A-75 Basic interest rate.

7 For purposes of this chapter, the basic interest
8 rate with respect to a debt instrument, investment, financing
9 lease, or account shall be the applicable interest rate (as
10 determined in section 40-23A-50). For debt instruments,
11 investments, or accounts of contractually fixed interest, the
12 applicable interest rate of the month of issuance shall apply.
13 For debt instruments, investments, or accounts of variable
14 interest rates and which have no reference interest rate, the
15 applicable interest shall be the Federal short-term interest
16 rate for each month. For debt instruments, investments, or
17 accounts of variable interest rates and which have a reference
18 interest rate, the applicable interest shall be the applicable
19 interest rate for the reference interest rate for each month.

20 §40-23A-76 Out-of-state financial intermediation
21 services.

22 (a) Special Rules Relating to Out-of-State
23 Financial Intermediation Services. Financial intermediation
24 services shall be deemed as used or consumed within the State
25 of Alabama if the person purchasing the services is a resident
26 of the State of Alabama.

1 (b) Designation of Tax Representative. Any person
2 that provides financial intermediation services to Alabama
3 residents must, as a condition of lawfully providing such
4 services, designate, in a form prescribed by the commissioner,
5 a tax representative for purposes of this chapter. The tax
6 representative shall be responsible for ensuring that the
7 taxes imposed by this chapter are collected and remitted and
8 shall be jointly and severally liable for collecting and
9 remitting these taxes. The commissioner may require reasonable
10 bond of the tax representative. The commissioner may bring an
11 action seeking a temporary restraining order, an injunction,
12 or such other order as may be appropriate to enforce this
13 section.

14 §40-23A-81 Additional matters.

15 (a) Intangible Property Antiavoidance Rule.
16 Notwithstanding section 40-23A-2, the sale of a copyright or
17 trademark shall be treated as the sale of taxable services
18 (within the meaning of section 40-23A-3) if the substance of
19 the sales of copyright or trademark constituted the sale of
20 the services that produced the copyrighted material or the
21 trademark.

22 (b) De Minimis Payments. Up to \$1,000 of gross
23 payments per calendar year shall be exempt from the tax
24 imposed by this chapter if:

25 (1) made by a person not in connection with a trade
26 or business at any time during such calendar year prior to
27 making said gross payments, and

1 (2) made to purchase any taxable property or service
2 which is brought into Alabama by such person for use or
3 consumption by such person in Alabama.

4 (c) De Minimis Sales. Up to \$5,000 per calendar year
5 of gross payments shall be exempt from the tax imposed by this
6 chapter if received

7 (1) by a person not in connection with a trade or
8 business during such calendar year prior to the receipt of
9 said gross payments; and

10 (2) in connection with a casual or isolated sale.

11 (d) De Minimis Sale of Financial Intermediation
12 Services. Up to \$10,000 per calendar year of gross payments
13 received by a person from the sale of financial intermediation
14 services (as determined in accordance with section 40-23A-71)
15 shall be exempt from the tax imposed by this chapter. The
16 exemption provided by this subsection is in addition to other
17 exemptions afforded by this chapter. The exemption provided by
18 this subsection shall not be available to large sellers (as
19 defined in section 40-23A-42(e)(3)).

20 (e) Proxy Buying Taxable. If a registered person
21 provides taxable property or services to a person either as a
22 gift, prize, reward, or as remuneration for employment, and
23 such taxable property or services were not previously subject
24 to tax then the provision of such taxable property or services
25 by the registered person shall be deemed the conversion of
26 such taxable property or services to personal use subject to

1 tax pursuant to section 40-23A-5(c) at the tax inclusive fair
2 market value of such taxable property or services.

3 (f) Substance Over Form. The substance of a
4 transaction will prevail over its form if:

5 (1) the transaction has no bona fide economic
6 purpose; and

7 (2) is designed to evade tax imposed by this
8 chapter.

9 (g) Certain Employee Discounts Taxable.

10 (1) EMPLOYEE DISCOUNT. For purposes of this
11 subsection, the term employee discount means an employer's
12 offer of taxable property or services for sale to its
13 employees or their families (within the meaning of section
14 40-23A-32) for less than the offer of such taxable property or
15 services to the general public.

16 (2) EMPLOYEE DISCOUNT AMOUNT. For purposes of this
17 subsection, the employee discount amount is the amount by
18 which taxable property or services are sold pursuant to an
19 employee discount below the amount for which such taxable
20 property or services would have been sold to the general
21 public.

22 (3) TAXABLE AMOUNT. If the employee discount amount
23 exceeds 20 percent of the price that the taxable property or
24 services would have been sold to the general public, then the
25 sale of such taxable property or services by the employer
26 shall be deemed the conversion of such taxable property or
27 services to personal use and tax shall be imposed on the

1 taxable employee discount amount. The taxable employee
2 discount amount shall be:

- 3 a. the employee discount amount, minus
- 4 b. 20 percent of the amount for which said taxable
5 property or services would have been sold to the general
6 public.

7 (h) Saturday, Sunday, or Legal Holiday. When the
8 last day prescribed for performing any act required by this
9 chapter falls on a Saturday, Sunday, or legal holiday, the
10 performance of such act shall be considered timely if it is
11 performed on the next day which is not a Saturday, Sunday, or
12 legal holiday.

13 §40-23A-82 Transition matters.

14 (a) Inventory.

15 (1) QUALIFIED INVENTORY. Inventory held by a trade
16 or business on the close of business on December 31, 2021,
17 shall be qualified inventory if it is sold:

- 18 a. before December 31, 2022;
- 19 b. by a registered person; and
- 20 c. subject to the tax imposed by this chapter.

21 (2) COSTS. For purposes of this section, qualified
22 inventory shall have the cost that it had for Federal income
23 tax purposes for the trade or business as of December 31, 2021
24 (including any amounts capitalized by reason of section 263A
25 of the Internal Revenue Code of 1986 as in effect on December
26 31, 2021).

1 (3) TRANSITIONAL INVENTORY CREDIT. The trade or
2 business which held the qualified inventory on the close of
3 business on December 31, 2021, shall be entitled to a
4 transitional inventory credit equal to the cost of the
5 qualified inventory (determined in accordance with paragraph
6 (2)) times the rate of tax imposed by section 40-23A-3.

7 (4) TIMING OF CREDIT. The credit provided under
8 paragraph (3) shall be allowed with respect to the month when
9 the inventory is sold subject to the tax imposed by this
10 chapter. Said credit shall be reported as an intermediate and
11 out-of-state sales credit and the person claiming said credit
12 shall attach supporting schedules in the form that the
13 Commissioner may prescribe.

14 (b) Work-in-Process. For purposes of this section,
15 inventory shall include work-in-process.

16 (c) Qualified Inventory Held by Businesses Not
17 Selling Said Qualified Inventory at Retail.

18 (1) IN GENERAL. Qualified inventory held by
19 businesses that sells said qualified inventory not subject to
20 tax pursuant to section 40-23A-4 (a) shall be eligible for the
21 transitional inventory credit only if that business (or a
22 business that has successor rights pursuant to paragraph (2))
23 receives certification in a form satisfactory to the
24 Commissioner that the qualified inventory was subsequently
25 sold subject to the tax imposed by this chapter.

26 (2) TRANSITIONAL INVENTORY CREDIT RIGHT MAY BE SOLD.
27 The business entitled to the transitional inventory credit may

1 sell the right to receive said transitional inventory credit
2 to the purchaser of the qualified inventory that gave rise to
3 the credit entitlement. Any purchaser of such qualified
4 inventory (or property or services into which the qualified
5 inventory has been incorporated) may sell the right to said
6 transitional inventory credit to a subsequent purchaser of
7 said qualified inventory (or property or services into which
8 the qualified inventory has been incorporated).

9 §40-23A-83 Phase-out of administration of repealed
10 taxes.

11 (a) Appropriations. Appropriations for any expenses
12 of the Department of Revenue including processing tax returns
13 with respect to the taxes repealed by this Act, revenue
14 accounting, and management for years after fiscal year 2024
15 are not authorized.

16 (b) Records. Records related to the administration
17 of taxes repealed by this Act shall be destroyed by the end of
18 fiscal year 2024, except that any records necessary to support
19 ongoing litigation with respect to taxes owed or refunds due
20 shall be retained until final disposition of such litigation.

21 Section 6. 40-2A-4 and 40-2A-18, Code of Alabama
22 1975, are hereby amended as follows:

23 "§40-2A-4.

24 "(a) Rights of the taxpayer.

25 "(1) For purposes of this subsection and subsections
26 (c) and (d), the term "department" shall include the
27 Department of Revenue, a self-administered county or

1 municipality, or a private examining or collecting firm,
2 depending on whether the Department of Revenue, a
3 self-administered county or municipality, or private examining
4 or collecting firm is conducting the examination of the
5 taxpayer.

6 "(2) At or before the commencement of an examination
7 of the books and records of a taxpayer, the department shall
8 provide to the taxpayer the current version of Publication 1A.
9 Publication 1A shall provide, in simple and non-technical
10 terms, a statement of the taxpayer's rights. Those rights
11 include the right to be represented during an examination, an
12 explanation of their appeal rights, and the right to know the
13 criteria and procedures used to select taxpayers for an
14 examination.

15 "(3) At or before the issuance of a preliminary
16 assessment, the department shall provide to the taxpayer in
17 simple and non-technical terms:

18 "a. A written description of the basis for the
19 assessment and any penalty asserted with respect to the
20 assessment.

21 "b. A written description of the method by which the
22 taxpayer may request an administrative review of the
23 preliminary assessment.

24 "(4) At or before the issuance of a final
25 assessment, the department shall inform the taxpayer by a
26 written statement of his or her right to appeal to the Alabama
27 Tax Tribunal or to circuit court.

1 "(5) Except in cases involving suspected criminal
2 violations of the tax law or other criminal activity, the
3 department shall conduct an examination of a taxpayer during
4 regular business hours after providing reasonable notice to
5 the taxpayer. A taxpayer who refuses a proposed time for an
6 examination on the grounds that the proposed examination would
7 cause inconvenience or hardship must offer reasonable
8 alternative times and dates for the examination.

9 "(6) At all stages of an examination or the
10 administrative review of the examination, and in any appeal to
11 the Alabama Tax Tribunal, a taxpayer is entitled to be
12 assisted or represented, at his own expense, by an authorized
13 representative. The department shall prescribe a form by which
14 the taxpayer may designate a person to represent him or her in
15 the conduct of any proceedings, including collection
16 proceedings, resulting from actions of the department. In the
17 absence of this form, the department or the Alabama Tax
18 Tribunal may accept such other evidence that a person is the
19 authorized representative of a taxpayer as it considers
20 appropriate. This provision shall not be construed as
21 authorizing the practice of law before the department, Alabama
22 Tax Tribunal, or any court in this state by a person who is
23 not a licensed attorney.

24 "(7) A taxpayer shall be allowed to make an audio
25 recording of any in-person interview with any officer or
26 employee of the department relating to any examination or
27 investigation by the department, provided, however, the

1 taxpayer must give reasonable advance notice to the department
2 of his or her intent to record and the recording shall be at
3 the taxpayer's own expense and with the taxpayer's own
4 equipment. The department shall also be allowed to record any
5 interview if the taxpayer is recording the interview, or if
6 the department gives the taxpayer reasonable advance notice of
7 its intent to record the interview. The department shall
8 provide the taxpayer with a copy of the recording, but only if
9 the taxpayer provides reimbursement for the cost of the
10 transcript and reproduction of the copy. The cost shall be
11 reasonable as prescribed by regulations issued by the
12 department.

13 "(8) This section shall not apply to criminal
14 investigations or investigations relating to the integrity of
15 any officer or employee of the department.

16 "(b) Department responsibilities generally.

17 ~~"(1) The commissioner shall appoint a Taxpayer
18 Advocate from among the employees of the department. This
19 officer shall receive and review inquiries or complaints
20 concerning matters that have been pending before the
21 department for an unreasonable length of time, or matters
22 where the taxpayer has been unable to obtain a reasonable
23 response after several attempts to communicate with the
24 department employee assigned to the taxpayer's case, or his or
25 her immediate superiors. In addition, this officer shall
26 review and have the authority to waive a penalty for
27 reasonable cause as provided in subsection (h) of Section~~

1 ~~40-2A-11, shall promptly review inquiries concerning release~~
2 ~~of property levied upon, the erroneous filing of liens, the~~
3 ~~failure to release a lien for good cause, or other matters~~
4 ~~complained of by a taxpayer or other affected party. The~~
5 ~~Taxpayer Advocate shall have no authority nor issue any ruling~~
6 ~~with regard to any taxes collected by or on behalf of a~~
7 ~~self-administered county or municipality. The Taxpayer~~
8 Advocate or his designee shall have the authority to issue
9 taxpayer assistance orders in the form and manner prescribed
10 herein and by department regulations. The Taxpayer Advocate or
11 his designee shall not be disciplined or adversely affected
12 for the issuance of taxpayer assistance orders unless a
13 pattern of issuing taxpayer assistance orders that are
14 manifestly unreasonable is proven by clear and convincing
15 evidence in an administrative hearing by a preponderance of
16 the evidence. A finding against taxpayer advocate or his
17 designee shall be subject to de novo review by a court of
18 competent jurisdiction. A taxpayer assistance order may only
19 be rescinded or modified by the taxpayer advocate or his
20 designee, by the commissioner (without delegation) or by the
21 general counsel of the Department of Revenue (without
22 delegation) upon a finding that the collection activity is
23 justified by clear and convincing evidence.

24 "a. The Taxpayer Advocate shall, subject to the
25 approval of the commissioner or the assistant commissioner,
26 issue taxpayer assistance orders in the form and manner
27 prescribed herein and by department regulations.

1 "b. Notwithstanding any statute of limitation or
2 other provision in this title, a taxpayer assistance order may
3 declare that any tax, including a final assessment, was
4 erroneously assessed or reported and is not a liability due
5 the state, or that a petition for refund was erroneously
6 denied by the department.

7 "c. A taxpayer assistance order shall grant relief
8 as deemed appropriate, including the voiding of any
9 erroneously issued final assessment for a tax which was not a
10 debt due the state, granting of any refund due the taxpayer,
11 or abating an assessment of interest that has accrued because
12 of undue delay by department personnel.

13 "d. At the request of the Alabama Tax Tribunal, the
14 taxpayer advocate shall review a final order issued by the
15 Alabama Tax Tribunal that was not appealed pursuant to Section
16 40-2B-2, if there is newly discovered evidence which by due
17 diligence could not have been discovered in time to file an
18 application for rehearing pursuant to Section 40-2B-2, and may
19 propose relief as the taxpayer advocate deems appropriate and
20 approved by the commissioner or the assistant commissioner.

21 "e. All taxpayer assistance orders shall be dated
22 and signed by the Taxpayer Advocate and approved either by the
23 commissioner or the assistant commissioner, and shall state
24 the underlying facts, the reasons for granting relief, and the
25 relief granted. Any taxpayer assistance order may, for good
26 cause, be modified or rescinded in writing by the Taxpayer

1 Advocate and either the commissioner or the assistant
2 commissioner.

3 "f. The Taxpayer Advocate shall have full access to
4 department personnel, books, and records subject, however, to
5 the confidentiality restrictions imposed by this chapter.

6 "g. Taxpayer assistance orders shall not be subject
7 to the confidentiality provisions of this title, and shall be
8 maintained by the secretary of the department and shall be
9 open to review upon written request. The Taxpayer Advocate
10 shall have no authority nor issue any ruling with regard to
11 any taxes collected by or on behalf of a self-administered
12 county or municipality.

13 "h. The commissioner shall make an annual report to
14 the Legislature of all taxpayer assistance orders approved in
15 accordance with the provisions of this section and Sections
16 40-2A-2 and 40-2A-3. Such report shall contain the total
17 amount of relief granted and the types of taxes for which
18 relief was granted.

19 "(2) The department shall maintain a continuing
20 education program to train employees of the department and to
21 provide them with a current knowledge of state and applicable
22 federal tax laws.

23 "(3) In addition to any other information provided
24 by law, the commissioner shall include in the department's
25 annual report information about the number or kind of audits
26 or assessments conducted in the year covered by the report.

1 "(4) The department shall not use the amounts of
2 taxes assessed by an employee of the department as:

3 "a. The basis of a production quota system for
4 employees; or

5 "b. The basis for evaluating an employee's
6 performance.

7 "(5) The department shall establish procedures for
8 monitoring the performance of department employees which may
9 include the use of evaluations obtained from taxpayers.

10 "(6) INSTALLMENT PAYMENTS.

11 "a. The commissioner is authorized to enter into
12 written agreements to allow any taxpayer to pay any tax in
13 installment payments if the commissioner determines that such
14 agreement will facilitate collection of such tax.
15 Notwithstanding the preceding sentence, such agreements shall
16 be entered into only regarding a tax that has been finally
17 assessed by the department and not appealed, and such
18 agreements shall not extend for a period exceeding 12 months,
19 provided, that any such agreement may be renewed at the
20 discretion of the commissioner for succeeding periods not to
21 exceed 12 months. The commissioner shall only be authorized to
22 enter such an agreement with regard to a tax administered or
23 collected by the department.

24 "b. The commissioner may terminate, alter, or modify
25 any agreement entered into hereunder if:

1 "1. Information provided by the taxpayer to the
2 commissioner prior to the date of such agreement was
3 inaccurate or incomplete;

4 "2. The taxpayer fails to pay any installment at the
5 time such installment payment is due under such agreement;

6 "3. The taxpayer fails to pay any other tax
7 liability due the department at the time such liability is
8 due, unless the taxpayer has appealed such other liability
9 pursuant to the terms of this chapter;

10 "4. The financial condition of the taxpayer has
11 significantly changed;

12 "5. The taxpayer fails to provide a financial
13 condition update as requested by the commissioner; or

14 "6. The commissioner believes that collection of any
15 tax to which an agreement under this provision relates is in
16 jeopardy.

17 "c. The commissioner shall have sole authority or
18 discretion to enter into or amend, modify, or terminate any
19 installment payment agreement provided for herein. The
20 commissioner shall promulgate regulations necessary for the
21 implementation of this provision.

22 "d. Any self-administered county or municipality
23 shall have the same authority as provided to the commissioner
24 by this subdivision relating to installment payments with
25 respect to taxes administered or collected by the
26 self-administered county or municipality.

1 "(c) Department failure to comply with this section.
2 The failure of the department to comply with any provision of
3 this section shall not prohibit the department from assessing
4 any tax as provided in this chapter, nor excuse the taxpayer
5 from timely complying with any time limitations under this
6 chapter. However, if the department fails to substantially
7 comply with the provisions of this section, the commissioner
8 shall, upon application by the taxpayer or other good cause
9 shown, abate any penalties otherwise arising from the
10 examination or assessment.

11 "(d) Abatement of penalty. The department shall
12 abate any penalty attributable to erroneous written advice
13 furnished to a taxpayer by an employee of the department.
14 However, this section shall apply only if the department
15 employee provided the written advice in good faith while
16 acting in his or her official capacity, the written advice was
17 reasonably relied on by the taxpayer and was in response to a
18 specific written request of the taxpayer, and the penalty did
19 not result from the taxpayer's failure to provide adequate or
20 accurate information.

21 "(e) Confidentiality of Tax Information.

22 "(1) IN GENERAL. All reports and report information
23 provided to the commissioner pursuant to this Title shall be
24 confidential and except as authorized by this chapter

25 "a. no officer or employee (including former
26 officers and employees) of the State of Alabama; and

1 "b. no other person who has had access to returns or
2 return information shall disclose any report or report
3 information obtained by him in any manner in connection with
4 his service as such officer or employee or otherwise.

5 "(2) DESIGNEES. The commissioner may, subject to
6 such requirements as the commissioner may impose, disclose the
7 report and report information of a person to that person or
8 persons as that person may designate to receive said
9 information or return.

10 "(3) INCOMPETENCY. The commissioner may, subject to
11 such requirements as the commissioner may impose, disclose the
12 report and report information to the committee, trustee, or
13 guardian of a person who is incompetent.

14 "(4) DECEASED PERSONS. The commissioner may disclose
15 the report and report information to the decedent's

16 "a. personal representative, administrator,
17 executor, estate trustee, or

18 "b. heir at law, next of kin, or beneficiary under a
19 will who has a material interest that will be affected by the
20 information.

21 "(5) BANKRUPTCY. The commissioner may disclose the
22 report and report information to a person's trustee in
23 bankruptcy.

24 "(6) COURT ORDER. The commissioner may disclose the
25 report and report information in compliance with a court
26 order.

1 "(7) LEGISLATURE. Upon written request from the
2 Chairman of the Committee on Ways and Means (General Fund) of
3 the House of Representatives or the Chairman of the Committee
4 on Finance (General Fund) of the Senate , the commissioner
5 shall disclose the report and report information, except that
6 any report or report information that can be associated with
7 or otherwise identify a particular person shall be furnished
8 to such committee only when sitting in closed executive
9 session unless such person otherwise consents in writing to
10 such disclosure.

11 "(8) WAIVER OF PRIVACY RIGHTS. A person may waive
12 confidentiality rights provided by this section. Such waiver
13 must be in writing.

14 "(9) INTERNAL USE. Disclosure of the report or
15 report information by officers or employees of Department of
16 Revenue to other officers or employees of the Department of
17 Revenue in the ordinary course of tax administration
18 activities shall not constitute unlawful disclosure of the
19 report or report information.

20 "(10) STATISTICAL USE. Upon request of the Governor,
21 the Commissioner shall furnish such reports and report
22 information to such officers and employees of the State of
23 Alabama as the Governor may prescribe by regulation or
24 executive order for the purposes of, and only to the extent
25 necessary, statistical activities authorized by law.

26 "§40-2A-18.

1 "Interest on any final assessment accrues from the
2 date of entry of the final assessment on the total amount of
3 its components including tax, interest, and any penalty, as
4 one lump sum amount. The preceding sentence is a restatement
5 of current law as it applies to interest accrual after final
6 assessment. Notwithstanding any provision of Act 2001-1088,
7 this section shall apply to all open tax years as of the
8 effective date of Act 2001-1088 and for all subsequent tax
9 years. Interest on amounts due to, or owed by, the
10 Commissioner pursuant to Chapter 23 shall be governed by
11 Chapter 23.

12 Section 7. A new Section 40-5-48 is hereby enacted
13 as follows:

14 §40-5-48

15 Resolution of Conflicts.

16 Whenever Chapter 23 is inconsistent with this
17 chapter, Chapter 23 shall govern with respect to the
18 administration and collection of the taxes imposed by chapter
19 23."

20 Section 8. A new section 40-29-122 is hereby enacted
21 as follows:

22 §40-29-122

23 Resolution of Conflicts.

24 Whenever Chapter 23 is inconsistent with this
25 chapter, Chapter 23 shall govern with respect to the
26 administration and collection of the taxes imposed by Chapter
27 23."

1 Section 9. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.