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Indicates New Matter

COMMITTEE REPORT

March 31, 2009

**H. 3584**

Introduced by Reps. Harrell, Bingham, Cooper, Harrison, Owens, Sandifer, White, Crawford, Bannister, Huggins, Sottile, Spires, Herbkersman, Loftis, Bowen, Erickson, Daning, Hardwick, J.R. Smith, Pinson, Toole, Brady, Clemmons, Edge, Forrester, Frye, Gullick, Hearn, Hiott, Horne, Kelly, Littlejohn, Long, E.H. Pitts, Rice, Skelton, D.C. Smith, G.M. Smith, Whitmire, Wylie, Gunn, Limehouse, Willis and J.E. Smith

S. Printed 3/31/09--H.

Read the first time February 19, 2009.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3584) to amend the Code of Laws of South Carolina, 1976, by adding Section 12‑21‑625 so as to impose a surtax on each cigarette in an amount of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking Section 12‑21‑625 of the 1976 Code, as contained in SECTION 1, and inserting:

/ Section 12‑21‑625. (A) Effective July 1, 2009, there is imposed a surtax on cigarettes subject to the tax imposed pursuant to Section 12‑21‑620(1) in an amount equal to two and one‑half cents on each cigarette.

(B) Notwithstanding another provision of law providing for the crediting of the revenues of license or other taxes, the revenue of the surtax imposed pursuant to this section must be credited as follows:

(1) each year, five million dollars to the Smoking Prevention and Cessation Trust Fund created pursuant to Section 11‑11‑230(A) and the revenue of five hundredths of a cent of the surtax on each cigarette to the Department of Agriculture to cause the marketing and branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments and to assist in relief from natural disasters affecting state‑grown crops; and

(2) the remaining annual revenue to the South Carolina Healthy Families Insurance Trust Fund created pursuant to Section 11‑11‑230(B) and the Palmetto Health Care Safety Net Trust Fund created pursuant to Section 11‑11‑230(C).

(C) For all purposes of reporting, payment, collection, and enforcement, the surtax imposed by this section is deemed to be imposed pursuant to Section 12‑21‑620.

(D) For purposes of this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1)./

Amend the bill further, as and if amended, by striking subsection (B) of Section 12‑21‑620 of the 1976 Code, as contained in SECTION 2 and inserting:

/ (B) As used in this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1) of this subsection. /

Amend the bill, further, Section 38‑62‑140 as found in SECTION 4, by deleting Section 38‑62‑140 in its entirety and inserting:

/ Section 38‑62‑140. The Department of Health and Human Services must submit and negotiate any state plan amendments, waiver applications, or other appropriate requests to the Centers for Medicare and Medicaid Services (CMS) necessary to allow the use of federal Medicaid funding to accomplish the purposes outlined in this section. The department must submit the initial request no later than ninety days after the effective date of this chapter.” /

Renumber sections to conform.

Amend title to conform.

DANIEL T. COOPER for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑21‑625 SO AS TO IMPOSE A SURTAX ON EACH CIGARETTE IN AN AMOUNT OF TWO AND ONE‑HALF CENTS, PROVIDE FOR THE CREDITING OF THE REVENUE FROM THE SURTAX TO THE SMOKING PREVENTION AND CESSATION TRUST FUND, THE DEPARTMENT OF AGRICULTURE FOR MARKETING AND BRANDING STATE‑GROWN CROPS AND TO ASSIST IN RELIEF FROM NATURAL DISASTERS AFFECTING STATE-GROWN CROPS, THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE TRUST FUND, AND THE PALMETTO HEALTH CARE SAFETY NET TRUST FUND, PROVIDE FOR REPORTING, PAYMENT, COLLECTION, AND ENFORCEMENT OF THE SURTAX, AND DEFINE “CIGARETTE”; TO AMEND SECTION 12‑21‑620, RELATING TO THE ORIGINAL CIGARETTE TAX, SO AS TO CONFORM DEFINITIONS; BY ADDING SECTION 11‑11‑230 SO AS TO CREATE AND ESTABLISH IN THE STATE TREASURY THE SMOKING PREVENTION AND CESSATION TRUST FUND, THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE TRUST FUND, AND THE PALMETTO HEALTH CARE SAFETY NET TRUST FUND, ALL SO AS TO RECEIVE DEPOSITS OF THE REVENUES FROM THE CIGARETTE SURTAX AS SPECIFIED; BY ADDING CHAPTER 62 TO TITLE 38 SO AS TO CREATE AND ESTABLISH THE SOUTH CAROLINA HEALTHY FAMILIES INSURANCE PLAN, PROVIDING FOR A PREMIUM CREDIT NOT TO EXCEED THREE THOUSAND DOLLARS TO AN ELIGIBLE INDIVIDUAL OR EMPLOYER TOWARD THE PURCHASE OF A QUALIFYING HEALTH INSURANCE PLAN, DESCRIBING ELIGIBILITY REQUIREMENTS AND THE CERTIFICATION PROCESS, DEFINING THE QUALIFYING INDIVIDUALLY OR EMPLOYER‑SPONSORED INSURANCE PLANS, AND PROVIDING FOR ADMINISTRATION AND REPORTING BY THE DEPARTMENT OF INSURANCE; AND BY ADDING SECTION 38‑74‑75 SO AS TO CREATE THE PALMETTO HEALTH CARE SAFETY NET PROGRAM, ESTABLISHING A SELF‑SUSTAINING AND FINANCIALLY INDEPENDENT PORTION OF THE PREMIUM ASSISTANCE POOL, AND PROVIDING FOR ELIGIBILITY REQUIREMENTS, ADMINISTRATION, AND REPORTING BY THE DEPARTMENT OF INSURANCE AND OPERATING GUIDELINES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 21, Title 12 of the 1976 Code is amended by adding:

“Section 12‑21‑625. (A) Effective July 1, 2009, there is imposed a surtax on cigarettes subject to the tax imposed pursuant to Section 12‑21‑620(1) in an amount equal to two and one‑half cents on each cigarette or fifty cents for each pack of cigarettes.

(B) Notwithstanding another provision of law providing for the crediting of the revenues of license or other taxes, the revenue of the surtax imposed pursuant to this section must be credited as follows:

(1) each year, five million dollars to the Smoking Prevention and Cessation Trust Fund created pursuant to Section 11‑11‑230(A) and one cent from each pack of cigarettes to the Department of Agriculture to cause the marketing and branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments and to assist in relief from natural disasters affecting state-grown crops; and

(2) the remaining annual revenue to the South Carolina Healthy Families Insurance Trust Fund created pursuant to Section 11‑11‑230(B) and the Palmetto Health Care Safety Net Trust Fund created pursuant to Section 11-11-230(C).

(C) For all purposes of reporting, payment, collection, and enforcement, the surtax imposed by this section is deemed to be imposed pursuant to Section 12‑21‑620.

(D) For purposes of this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).”

SECTION 2. Section 12‑21‑620 of the 1976 Code is amended to read:

“Section 12‑21‑620. (A) There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

(1) upon all cigarettes made of tobacco or any substitute for tobacco, three and one‑half mills on each cigarette;

(2) upon all tobacco products, as defined in Section 12‑21‑800, five percent of the manufacturer’s price.

Manufacturer’s price as used in this section is the established price at which a manufacturer sells to a wholesaler.

(B) As used in this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1) of this subsection.”

SECTION 3. Article 1, Chapter 11, Title 11 of the 1976 Code is amended by adding:

“Section 11‑11‑230. (A) There is created in the State Treasury the Smoking Prevention and Cessation Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings and interest on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. The trust fund must transfer five million dollars annually to the Department of Health and Environmental Control to administer a statewide smoking prevention and cessation program.

(B) There is created in the State Treasury the South Carolina Healthy Families Insurance Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings and interest on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. The trust fund must transfer the appropriate amount of money annually to the Department of Insurance to fund the South Carolina Healthy Families Insurance Plan as provided in Chapter 62 of Title 38.

(C) There is created in the State Treasury the Palmetto Health Care Safety Net Trust Fund. This fund is separate and distinct from the general fund of the State and all other funds. Earnings on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. Beginning July 1, 2011, and every July first thereafter, the State Treasurer shall make a transfer from the South Carolina Healthy Families Insurance Trust Fund to the Palmetto Health Care Safety Net Trust Fund in an amount determined by the Board of Economic Advisors. The Board of Economic Advisors shall determine the amount to be transferred by calculating the difference between ninety percent of the balance of the South Carolina Healthy Families Insurance Trust Fund on July first, less the amount of projected premium assistance payments in the following twelve months.”

SECTION 4. Title 38 of the 1976 Code is amended by adding:

“CHAPTER 62

The South Carolina Healthy Families

Insurance Plan

Section 38‑62‑10. This chapter may be cited as the ‘South Carolina Healthy Families Insurance Plan’.

Section 38‑62‑20. For the purposes of this section:

(A) ‘Department’ means the South Carolina Department of Insurance.

(B) ‘Federal poverty level’ means the federal poverty level guidelines published annually by the United States Department of Health and Human Services.

(C) ‘Health insurer’ means an insurance company, a health maintenance organization, a community health plan approved by the Department of Health and Human Services, and any other entity providing health insurance coverage, as defined in Section 38‑71‑670(6), which is licensed to engage in the business of insurance in this State and which is subject to state insurance regulation; and Medicaid managed care organizations qualified to offer services through the Department of Health and Human Service’s Healthy Connections Program.

(D) ‘Healthy Families Insurance Trust Fund’ means the South Carolina Healthy Families Insurance Trust Fund created pursuant to Section 11‑11‑230(B).

(E) ‘Participant’ means an individual who has been issued a certificate of eligibility by the Department of Insurance and has purchased a qualifying health insurance plan within ninety days of the date of issue of the certificate.

(F) ‘Program’ means the South Carolina Healthy Families Insurance Plan.

(G) ‘Qualifying health plan’ means any health insurance policy or health benefit plan offered by a health insurer that provides health insurance coverage, as defined in Section 38‑71‑670(6), or a community health plan approved by the Department of Health and Human Services that has been approved by the Department of Insurance as a qualifying plan pursuant to Section 38‑62‑30.

(H) ‘Small employer’ means, in connection with a health insurance plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or employer, as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar year, employed no more than twenty‑five eligible employees or employed an average of not more than twenty‑five employees on business days during the preceding calendar year, and who employs at least two employees on the first day of the plan year. For purposes of this chapter, the number of employees must be determined by adding together all employees of the small employer and all employees of a parent, subsidiary, or affiliated company of the small employer.

Section 38‑62‑30. No later than January 1, 2010, the department shall issue regulations outlining the minimum actuarial value a health insurance policy, health benefit plan, or community health plan must meet to be a qualifying health plan for inclusion in the program.

Section 38‑62‑40. Beginning on July 1, 2010, an individual meeting the eligibility requirements of this chapter may receive a premium credit of seventy‑five percent of the actual cost of a qualifying plan, not to exceed three thousand dollars a year. A small employer may receive a premium credit of sixty‑seven percent of the actual cost of a qualifying health plan, not to exceed three thousand dollars a year. Annually after that, the department may adjust the amount of premium credit, except that the amount of credit must not be less than fifty percent of the actual cost of coverage.

Section 38‑62‑50. To be eligible for the premium credit, an individual must receive a certificate of eligibility from the department. The department shall develop the form and manner for an individual to apply to the department for a certificate and shall make the form readily available to health insurance agents and other persons authorized to sell health insurance in this State. For purposes of determining the taxpayer’s federal poverty level, the department, minimally, shall require a copy of the applicant’s state income tax return for the previous year and the applicant’s W‑2 form. The department also shall require the applicant to sign a verification under oath, subject to penalties of perjury, that the applicant meets the eligibility criteria for the program pursuant to Section 38‑62‑60. The department shall implement appropriate safeguards and use available existing resources to verify an applicant’s uninsured status. The department shall pursue the recoupment of any premium credit provided to an individual filing a false application.

Section 38‑62‑60. (A) The department shall issue an applicant a certificate, if the department determines that:

(1) the applicant’s family or household income is less than two hundred percent of the federal poverty level based on the applicant’s family status;

(2) the applicant is a citizen of the United States and has been a resident of this State for the twelve‑month period immediately preceding the application;

(3) the applicant is not eligible for or enrolled in Medicare, Medicaid, or other state or federal government health insurance program;

(4) the applicant is between the ages of nineteen and sixty‑four; and

(5) the department has not yet issued certificates to the maximum number of eligible individuals pursuant to subsection (C).

(B) Each eligible person in a qualifying household must apply to receive an individual certificate.

(C) The department shall issue eligible individuals certificates in the order in which the application is received. The maximum number of eligible individuals receiving premium credit payments is reached when the anticipated amount of claims for premium credit payments reaches ninety percent of the amount of money allocated for premium credit payments. The director of the department shall establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because the maximum number of individuals is reached. The director shall notify all individuals who applied for a certificate and who were not issued a certificate the reason that they did not receive a certificate and whether they were placed on the waiting list.

Section 38‑62‑70. The certificate issued pursuant to Section 38‑62‑60 is valid for the twelve months following the purchase of a qualifying health plan, if the plan is purchased within ninety days of the date the certificate was issued.

Section 38‑62‑80. (A) The department shall develop the form and manner for a person to apply for a renewal certificate and shall make the form readily available to health insurance agents and other persons authorized to sell health insurance in this State. Participants are responsible for obtaining and completing the form and forwarding it and documentation required by the department. The department shall process renewal applications along with new applications in accordance with Section 38‑62‑60. Priority must be given to renewal applications.

(B) In the case of individually sponsored insurance, sixty days before the expiration of the policy term, the insurer must send the insured a certificate renewal application promulgated by the department. The insured is responsible for completing the form and forwarding it and documentation required by the department.

(C) In the case of employer‑sponsored insurance, sixty days before the expiration of the policy term, the employer must send the insured a certificate renewal application promulgated by the department. The insured is responsible for completing the form and forwarding it and documentation required by the department.

(D) The department may issue a renewal certificate only if the applicant remains eligible.

Section 38‑62‑90. (A) In the case of individually sponsored insurance, the department shall provide the premium credit directly to the individual’s choice of participating qualifying insurers. To qualify under individually sponsored insurance, an individual must not be enrolled under employer‑sponsored insurance. To obtain the premium credit, an insurer must present a valid certificate to the department. The release of the premium credit to the insurer is contingent upon the insurer submitting proof of the participant satisfying his share of the premium liability. The amount paid in premium credit may not exceed three thousand dollars each year for each eligible participant. The department shall make quarterly premium credit payments to insurers.

(B)(1) In the case of employer‑sponsored insurance, the department shall provide the premium credit directly to the employer of (i) the participant or (ii) the eligible covered dependent of the participant. To qualify for the premium credit, an employer must provide at least seventy‑five percent of the cost of coverage. To obtain the premium credit, an employer must present a valid certificate to the department for each covered eligible person. The amount paid in premium credit to a small employer may not exceed three thousand dollars each year for each eligible participant. The release of the premium credit to the employer is contingent upon the employer submitting proof of the participant and the small employer satisfying his respective share of the premium liability. The department shall make quarterly premium credit payments to small employers.

(2) If the covered participant ceases to be covered by the employer’s plan, the employer must return the certificate to the participant and notify the department that the employer no longer covers the participant under a qualifying health plan. The remaining value of the certificate may be used to obtain a qualifying health plan.

Section 38‑62‑100. This chapter is not intended, nor shall it operate, to guarantee health insurance coverage to any individual.

Section 38‑62‑110. The department may charge the South Carolina Healthy Families Insurance Trust Fund a quarterly administrative fee of up to one percent of the amount credited to the South Carolina Healthy Families Insurance Trust Fund in the preceding quarter.

Section 38‑62‑120. The department shall provide an annual report on the South Carolina Healthy Families Insurance Trust Fund to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Banking and Insurance Committee, the Chairman of the House Labor, Commerce and Industry Committee, and the Board of Economic Advisors. The report shall provide, at a minimum, a general description of the services provided and populations served, the number of people served, the average cost for each person, the additional administration costs of the programs funded by the South Carolina Healthy Families Insurance Trust Fund, and a three‑year forecast of the utilization of the fund.

Section 38‑62‑130. The Department of Insurance shall develop and implement a public awareness program for the South Carolina Healthy Families Insurance Plan.

Section 38‑62‑140. The Department of Health and Human Services shall submit and negotiate any state plan amendments, waiver applications, or other appropriate requests to the Centers for Medicare and Medicaid Services (CMS) necessary to allow the use of federal Medicaid funding to accomplish the purposes outlined in this section. The department shall submit the initial request no later than January 1, 2011.”

SECTION 5. Chapter 74, Title 38 of the 1976 Code is amended by adding:

“Section 38‑74‑75. (A) There is created the Palmetto Health Care Safety Net Program of the pool. The program must be funded by the Palmetto Health Care Safety Net Trust Fund created in Section 11‑11‑230(C), and must be self sustaining and financially independent from the remainder of the pool.

(B) Any person eligible for pool coverage may opt to participate in the Palmetto Health Care Safety Net Program of the pool, if the person also:

(1) is at least nineteen years of age;

(2) provides evidence of United States citizenship and of South Carolina residency for the sixty months immediately preceding the application for coverage;

(3) provides evidence of family or household annual income of less than four hundred percent of the poverty level based on the person’s family status;

(4) agrees to participate in the Palmetto Health Care Safety Net Program and to comply with all care coordination plans, case management procedures, and managed care criteria of the program developed by the department; and

(5) is not eligible for or enrolled in Medicare, Medicaid, or other state or federal government health insurance program.

(C) The department shall oversee the Palmetto Health Care Safety Net Program. The department also shall (i) select a qualified entity or entities, in accordance with the procedures contained in Section 38‑74‑40, to administer the program, and (ii) promulgate regulations necessary to implement the provisions of this section.

(D) The benefits under the Palmetto Health Care Safety Net Program must be equivalent to the benefit plan currently offered by the existing pool that has the highest actuarial value; except that the benefit plan under the Palmetto Health Care Safety Net Program must incorporate all of the requirements in Section 38‑74‑75(B).

(E) Participation in the Palmetto Health Care Safety Net Program is limited to the funds available in the Palmetto Health Care Safety Net Trust Fund so as to prevent any loss in program operations. The department or its contracted entity shall accept and process applications, and award the premium assistance provided for in this section, in the order in which the applications are received. The department shall establish a waiting list if there are insufficient funds available to allow all applicants to participate. The department also may implement a maximum limit on individual coverage to prevent an operating loss. The program must not be funded in any part by the funding mechanisms of the existing pool. The department may charge the Palmetto Health Care Safety Net Trust Fund a quarterly administrative fee of up to one percent of the amount credited to the Palmetto Health Care Safety Net Trust Fund in the preceding year.

(F) Beginning on July 1, 2011, and then only to the extent sufficient funds exist in the Palmetto Health Care Safety Net Trust Fund, each participant in the Palmetto Health Care Safety Net Program is entitled to the following premium schedule according to the prevailing federal poverty level:

(a) for annual family or household incomes less than one hundred percent of federal poverty level, the annual premium is one thousand dollars;

(b) for annual family or household incomes one hundred percent and above but less than two hundred percent of federal poverty level, the annual premium is two thousand dollars;

(c) for annual family or household incomes two hundred percent and above but less than three hundred percent of federal poverty level, the annual premium is three thousand dollars; and

(d) for annual family or household incomes three hundred percent and above but less than four hundred percent of federal poverty level, the annual premium is four thousand dollars.

(G) The department may initiate periodic transfers in the amount of the approved premium assistance from the Palmetto Health Care Safety Net Trust Fund to the administering entity of the Palmetto Health Care Safety Net Program to be credited against the premiums owed by the program and any additional funds to maintain the solvency of the program.

(H) The establishment of rates, forms, or procedures or other joint or collective action required by this section must not be the basis of any legal action, criminal or civil liability, or penalty against the program. A cause of action does not arise against the program’s agents, employees, or representatives, for any good faith act or omission in the performance of their powers and duties pursuant to this section.

(I) The department must provide an annual report on the Palmetto Health Care Safety Net Program of the pool to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Banking and Insurance Committee, the Chairman of the House Labor, Commerce and Industry Committee, and the Board of Economic Advisors. The report shall provide, at a minimum, a general description of the services provided and populations served, the number of people served, the average cost for each person, the additional administration costs of the programs funded by the South Carolina Palmetto Health Care Safety Net Trust Fund, and a three‑year forecast of the utilization of the fund.”

SECTION 6. Except where otherwise provided, this act takes effect upon approval by the Governor.

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