

1 HB404
2 157557-3
3 By Representative Jones
4 RFD: Commerce and Small Business
5 First Read: 04-FEB-14

1 ENGROSSED

2
3
4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 To amend Sections 40-25-1, 40-25-2, 40-25-4,
9 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20, and 40-2A-10,
10 Code of Alabama 1975; to add Section 40-25-16.1 to Title 40,
11 Chapter 25, Code of Alabama 1975; to change certain
12 definitions; to separate little cigars from filtered
13 cigarette-sized cigars and eliminate cigar categories for
14 which tax is no longer applicable; to remove archaic language
15 requiring distributors to cancel a stamp when it has been
16 affixed to tobacco products; to require the state tobacco tax
17 amount to be separately stated on the invoice; to require
18 retailers to maintain 90 days of invoices; to require computer
19 or machine generated invoices; to add penalties; and to amend
20 confiscation procedures and additional reporting requirements.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 40-25-1, 40-25-2, 40-25-4,
23 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20 and 40-2A-10,
24 Code of Alabama 1975, are amended to read as follows:

25 "§40-25-1.

1 "For the purposes of this article, the following
2 terms shall have the respective meanings ascribed by this
3 section:

4 "(1) WHOLESALE DEALER AND JOBBER. Persons, firms, or
5 corporations who buy tobacco products direct from the
6 manufacturer or an affiliate of the manufacturer and sell at
7 wholesale only, any one or more of the articles taxed herein
8 to licensed wholesale dealers, jobbers, semijobbers, and
9 retail dealers for the purpose of resale only.

10 "(2) RETAIL DEALER. Every person, firm, or
11 corporation, other than a wholesale dealer or jobber, who
12 shall sell or offer for sale any one or more of the articles
13 taxed herein, irrespective of quantity or amount, or the
14 number of sales; and all persons operating under a retail
15 dealer's license.

16 "(3) SEMIJOBBER. Persons, firms, or corporations who
17 buy tobacco products from permitted wholesalers or obtain
18 tobacco from any other source and sell at wholesale any one or
19 more of the articles taxed herein to licensed retail dealers
20 for the purpose of resale only.

21 "~~(3)~~(4) STAMPS. The stamp or stamps by the use of
22 which the tax levied under this article is paid and shall be
23 designated Alabama Revenue Stamps.

24 "(5) CIGARS, CHERROOTS, STOGIES, ETC. A roll for
25 smoking that is of any size or shape and that is made wholly
26 or in part of tobacco or any substitute therefor, irrespective
27 of whether the tobacco is pure or flavored, adulterated or

1 mixed with any other ingredient, if the roll has a wrapper
2 made wholly or in part of tobacco."

3 "§40-25-2.

4 "(a) In addition to all other taxes of every kind
5 now imposed by law, every person, firm, corporation, club, or
6 association, within the State of Alabama, who sells or stores
7 or receives for the purpose of distribution to any person,
8 firm, corporation, club, or association within the State of
9 Alabama, cigars, cheroots, stogies, cigarettes, smoking
10 tobacco, chewing tobacco, snuff, or any substitute therefor,
11 either or all, shall pay to the State of Alabama for state
12 purposes only a license or privilege tax which shall be
13 measured by and graduated in accordance with the volume of
14 sales of such person, firm, corporation, club, or association
15 in Alabama. There is hereby levied license or privilege taxes
16 on articles containing tobacco enumerated in this article in
17 the following amounts:

18 "(1) LITTLE CIGARS. Upon cigars of all descriptions,
19 including filtered cigars, made of tobacco, or any substitute
20 therefor, and weighing not more than three pounds per 1,000,
21 \$.04 for each ten cigars, or fractional part thereof ~~the tax~~
22 ~~shall be \$0.015 for each cigar.~~

23 "(2) FILTERED CIGARS. Upon ~~cigarette-sized filtered~~
24 ~~cigars~~ filtered cigars that have a cellulose acetate or
25 similar integrated filter, made of tobacco, or any substitute
26 therefor ~~and packaged in any quantity, the tax shall be~~

1 ~~\$0.015 for each filtered cigar, and weighing more than three~~
2 ~~pounds per 1,000, \$0.015 for each filtered cigar~~

3 ~~"(2)(3) CHERROOTS, STOGIES, CIGARS, ETC. Upon cigars~~
4 ~~of all descriptions made of tobacco, or any substitute~~
5 ~~therefor, retailing for three and one-third cents each or~~
6 ~~less, \$3 per 1,000 the tax shall be \$40.50 per thousand cigars~~
7 ~~or \$0.0405 each.~~

8 ~~"(3) CIGARS. Upon cigars of all descriptions made of~~
9 ~~tobacco, or any substitute therefor, retailing for more than~~
10 ~~three and one-third cents each and not more than \$.05 each, \$6~~
11 ~~per 1,000.~~

12 ~~"(4) CIGARS. Upon cigars of all descriptions made of~~
13 ~~tobacco, or any substitute therefor, retailing for more than~~
14 ~~\$.05 each and not exceeding \$.08 each, \$9 per 1,000.~~

15 ~~"(5) CIGARS. Upon cigars of all descriptions made of~~
16 ~~tobacco, or any substitute therefor, retailing for more than~~
17 ~~\$.08 each and not exceeding \$.10 each, \$15 per 1,000.~~

18 ~~"(6) CIGARS. Upon cigars of all descriptions made of~~
19 ~~tobacco, or any substitute therefor, retailing for more than~~
20 ~~\$.10 each and not exceeding \$.20 each, \$30 per 1,000.~~

21 ~~"(7) CIGARS. Upon cigars of all descriptions made of~~
22 ~~tobacco, or any substitute therefor, retailing for more than~~
23 ~~\$.20 each, \$40.50 per 1,000.~~

24 ~~"(8)(4) CIGARETTES. Upon all cigarettes made of~~
25 ~~tobacco, or any substitute therefor, 21.25 mills on each such~~
26 ~~cigarette.~~

1 "~~(9)~~(5) SMOKING TOBACCO. Upon all smoking tobacco,
2 including granulated, plug cut, crimp cut, ready rubbed, and
3 other kinds and forms of tobacco prepared in such manner as to
4 be suitable for smoking in a pipe or cigarette, upon each
5 package: Weighing not more than one and one-eighth ounces, tax
6 \$.04; over one and one-eighth ounces, not exceeding two
7 ounces, tax \$.10; over two ounces, not exceeding three ounces,
8 tax \$.16; over three ounces, not exceeding four ounces, tax
9 \$.21; \$.06 additional tax for each ounce or fractional part
10 thereof over four ounces.

11 "~~(10)~~(6) CHEWING TOBACCO. Upon all chewing tobacco
12 prepared in such manner as to be suitable for chewing only and
13 not suitable for smoking as described and taxed in subdivision
14 (9) of this subsection: \$.015 per ounce or fractional part
15 thereof.

16 "~~(11)~~(7) SNUFF. Upon each can or package of snuff
17 weighing not more than five-eighths ounces, one cent tax; over
18 five-eighths ounces and not exceeding one and five-eighths
19 ounces, \$.02 tax; over one and five-eighths ounces and not
20 exceeding two and one-half ounces, \$.04 tax; over two and
21 one-half ounces and not exceeding five ounces (cans, packages,
22 gullets), \$.06 tax; over three ounces and not exceeding five
23 ounces (glasses, tumblers, bottles), seven cents tax; over
24 five ounces and not exceeding six ounces, \$.08 tax; weighing
25 over six ounces, an additional \$.12 for each ounce or
26 fractional part thereof.

1 ~~"(b) Whenever in this article reference is made to~~
2 ~~any manufactured tobacco products, manufactured or imported to~~
3 ~~sell at a certain price, as the basis for computing the tax,~~
4 ~~it is intended to mean the ordinary, customary, or usual price~~
5 ~~paid by the consumer for such tobacco products taxable under~~
6 ~~this article.~~

7 ~~"(c)(b) Whenever in this article reference is made~~
8 ~~to any manufactured tobacco products on which the tax is based~~
9 ~~on weight, the weight as shown by the manufacturer or the~~
10 ~~federal internal revenue stamp shall apply.~~

11 ~~"(d) When the retail or selling price is referred to~~
12 ~~in this article as the basis for computing the amount of~~
13 ~~stamps required on any article, it is intended to mean the~~
14 ~~retail or selling price of the articles before adding the~~
15 ~~amount of the tax.~~

16 ~~"(e)(c) When any articles or commodities subject to~~
17 ~~tax in this article are given as prizes on punch boards,~~
18 ~~shooting galleries, premiums, etc., the tax shall be based on~~
19 ~~the ordinary retail selling price tax rates in subsection (a)~~
20 ~~of such articles.~~

21 ~~"(f)(d) The tax herein levied shall be paid to the~~
22 ~~state through the use of stamps as herein provided. However,~~
23 ~~every wholesaler, distributor, jobber, semijobber or retail~~
24 ~~dealer shall add the amount of the tax levied herein to the~~
25 ~~price of the tobacco or tobacco products sold, it being the~~
26 ~~purpose and intent of this provision that the tax levied is in~~
27 ~~fact a levy on the ultimate consumer or user with the~~

1 wholesaler, distributor, jobber, semijobber or retail dealer
2 acting merely as an agent of the state for the collection and
3 payment of the tax to the state. Therefore, notwithstanding
4 any exemptions from taxes which any such seller may now or
5 hereafter enjoy under the Constitution or laws of this or any
6 other state, or of the United States, he shall collect the tax
7 imposed hereunder from the purchaser or consumer, and the
8 amount of the tax shall constitute a debt from the purchaser
9 or consumer to the seller until paid. It shall be unlawful for
10 any person, firm, corporation, association, or copartnership
11 to fail or refuse to add to the sales price and collect from
12 the purchaser the amount of the tax to be added to the sales
13 price and collected from the purchaser hereunder. Stamps in
14 denominations to the amount of the tax or in denominations
15 specified pursuant to subsection ~~(g)~~ (e) of this section shall
16 be affixed to the box or other container from or in which
17 tobacco products taxed by this section are normally sold at
18 retail. The stamps shall be affixed in such a manner that
19 their removal will require continued application of water, or
20 steam, or heat; and in case of cigars, cheroots, chewing
21 tobacco and like manufactured tobacco products, where sales
22 are made from the original container, the stamps shall be
23 affixed to the box or container in such a way that the stamps
24 shall be torn in two or mutilated when such containers or
25 boxes are opened for the sale of the tobacco products. In the
26 case of cigarettes, smoking tobacco, snuff and like products
27 sold at retail in packages, the required amount of stamps to

1 cover the tax shall be affixed to each individual package or
2 container. All taxable tobaccos herein enumerated, when
3 offered for sale, either at wholesale or retail, without
4 having stamps affixed in the manner set out by this article,
5 or without payment of the tax by return by the wholesaler,
6 jobber, semijobber, or registered retailer, shall be subject
7 to confiscation, in the manner provided for contraband goods
8 as set out in this article.

9 "~~(g)~~ (e) The Commissioner of Revenue shall prepare
10 and issue stamps in denominations for the amount of the tax
11 imposed by this article provided that if the commissioner
12 determines that it is not economical for the state to have a
13 stamp prepared and issued for one or more particular types of
14 packages of tobacco products, then he may by regulation
15 prescribe the use of a stamp in a denomination other than for
16 the amount of the tax imposed with the difference between the
17 amount of tax actually imposed and the amount of tax
18 denominated by the stamp paid with the use of a monthly
19 report; or he may require a monthly report without use of a
20 stamp to report the amount of taxes due.

21 "~~(h)~~ (f) The increases levied by this section shall
22 be exclusive and shall be in lieu of any other or additional
23 local taxes and/or license fees, county or municipal, imposed
24 on the sale or use of cigarettes and/or other tobacco
25 products. Notwithstanding the foregoing, an act of the
26 Legislature or an ordinance or resolution by a taxing
27 authority passed or enacted on or before May 18, 2004,

1 imposing a local tax and/or license fee shall remain
2 operative, but no additional local tax and/or license fee may
3 thereafter be levied on the sale of cigarettes and/or other
4 tobacco products.

5 ~~"(i)(g)~~ Local taxes and/or license fees, county or
6 municipal, imposed on the sale or use of cigarettes shall be
7 paid to the local government through the use of stamps affixed
8 to the product as provided herein for the state tax. Provided,
9 however, this requirement shall not be interpreted to require
10 the Department of Revenue to prepare all stamps or to collect
11 all local taxes. Local governments may contract with another
12 entity to collect their local cigarette tax but all local
13 taxes must be collected as provided herein.

14 "§40-25-4.

15 "The license taxes imposed by this article shall be
16 paid by affixing stamps in the manner and at the time herein
17 set forth. In the case of cigars, stogies, cheroots, chewing
18 tobacco, and like products, the stamps shall be affixed to the
19 box or container in which or from which normally sold at
20 retail. In the case of cigarettes, smoking tobacco, and snuff,
21 the stamps shall be affixed to each individual package. Time
22 allowed for affixing stamps shall be as follows: Every
23 wholesale or retail dealer in this state, except wholesalers
24 who are issued a permit by the Department of Revenue, shall
25 immediately after receipt of any unstamped cigars, stogies,
26 cheroots, chewing tobacco, cigarettes, smoking tobacco, or
27 snuff, unless sooner offered for sale, cause the same to have

1 the requisite denominations and amount of stamp or stamps to
2 represent the tax affixed as stated herein, ~~and to cause same~~
3 ~~to be cancelled by writing or stamping across the face of each~~
4 ~~stamp the registered number of such wholesaler or retailer,~~
5 ~~which shall be furnished by the Department of Revenue.~~ The
6 stamping of the cigars, stogies, cheroots, chewing tobacco,
7 cigarettes, smoking tobacco, and snuff shall actually begin
8 within one hour after receipt of the cigars, stogies,
9 cheroots, chewing tobacco, cigarettes, smoking tobacco, and
10 snuff in the premises of the wholesale or retail dealer,
11 except wholesalers who are issued a permit by the Department
12 of Revenue, and the stamping shall be continued with
13 reasonable diligence by the wholesale or retail dealer until
14 all of the unstamped cigars, stogies, cheroots, chewing
15 tobacco, cigarettes, smoking tobacco, and snuff have been
16 stamped ~~and the stamps cancelled as provided by law.~~
17 Wholesalers who have been issued a permit by the department
18 shall affix the required stamps prior to any sale. Every
19 wholesale dealer shall at the time of shipping or delivering
20 any tobacco products as enumerated herein make a true
21 duplicate invoice of the same which shall show full and
22 complete details of the sale or delivery of the taxable
23 article, shall state the tobacco tax separately from the price
24 of the tobacco products, and shall retain the same subject to
25 the use and inspection of the Department of Revenue, or its
26 duly authorized agents for a period of three years. Wholesaler
27 invoices must be computer or machine generated and the

1 seller's or supplier's name must be on the invoice.
2 Handwritten invoices may not be considered legitimate
3 documentations to substantiate proof of sale. Wholesale and
4 retail dealers shall also keep a record of purchases of all
5 tobacco products enumerated and defined in this article and
6 hold all books, records, and memoranda pertaining to the
7 purchase and sale of those tobacco products open to the
8 inspection of the Department of Revenue or its duly authorized
9 agents at any and all times. Every wholesale dealer shall
10 furnish to the Department of Revenue a monthly report, between
11 the first and twentieth of each month for the preceding month,
12 of all orders for tobacco products purchased through the
13 wholesale dealer from without this state on a drop shipment
14 and consigned direct to the person, firm, corporation, or
15 association of persons ordering the tobacco products from
16 without this state through the wholesale dealer. If, upon
17 examination of invoices of any tobacco product sold by a
18 wholesaler or purchased or received, or both, by a retail
19 dealer, he or she is unable to furnish evidence to the
20 Department of Revenue of sufficient stamp purchases to cover
21 the unstamped tobaccos purchased, the prima facie presumption
22 shall arise that the tobacco products were sold without the
23 proper stamps affixed thereto. Any wholesaler or retailer who
24 fails or refuses to comply with any or all of the above
25 provisions shall be deemed a violator of this section and,
26 upon conviction, punished by a fine of not less than \$500 nor
27 more than \$1,000, or imprisonment in the county jail for a

1 period of six months, either or both, at the discretion of the
2 court.

3 "§40-25-7.

4 "Any retail dealer or semijobber of tobacco products
5 enumerated and defined in this article purchasing, or
6 receiving such commodities from without the state, whether the
7 same shall have been ordered or purchased through a wholesaler
8 or jobber in this state, or by drop shipment or otherwise,
9 shall within 12 hours of receipt of such tobacco products,
10 ~~mail by certified or registered mail~~ provide electronically, a
11 true duplicate invoice of all such purchases or receipts to
12 the Department of Revenue ~~at Montgomery, Alabama~~, said invoice
13 carrying the name of the person or firm from whom or through
14 whom such purchases or shipments of the tobacco products so
15 received, showing kinds and quantities. Any retail dealer or
16 semijobber failing or refusing to furnish duplicate invoices,
17 in both the manner and time allowed, ~~shall be guilty of a~~
18 ~~misdemeanor and upon conviction shall be punished by a fine of~~
19 ~~not less than \$50 for each offense, or imprisonment in the~~
20 ~~county jail for a period not exceeding 60 days~~ may be subject
21 to a department imposed penalty of not less than one thousand
22 dollars (\$1,000) nor more than five thousand dollars (\$5,000),
23 to be multiplied by the sum of the current violation plus
24 prior violations of this subsection. Tobacco products imported
25 by retail dealers and semijobbers in which a true and
26 duplicate invoice has not been received by the department are

1 considered contraband and subject to confiscation as provided
2 for in this chapter.

3 "§40-25-8.

4 "Any cigarettes, smoking tobacco, cigars, stogies,
5 cheroots, chewing tobacco, snuff, or other products taxable
6 under this article found at any point within the State of
7 Alabama, which the cigarettes, smoking tobacco, cigars,
8 stogies, cheroots, chewing tobacco, snuff, or other products
9 taxable under this article shall have been within the State of
10 Alabama for a period of two hours, or longer, in possession of
11 any retailer or semijobber not having affixed to the package
12 the stamps as provided in this article, or in the case of
13 products not requiring a stamp to be affixed where purchase
14 invoices do not itemize the applicable tobacco taxes, are
15 declared to be contraband goods and may be seized by the
16 Department of Revenue, or its agents or by any peace officer
17 of the State of Alabama, without a warrant and the goods shall
18 be delivered to the Department of Revenue for ~~sale at public~~
19 ~~auction to the highest bidder after due advertisement. The~~
20 ~~Department of Revenue before delivering any of the goods so~~
21 ~~seized shall require the purchaser to affix the proper amount~~
22 ~~of stamps to the individual package as above defined. The~~
23 ~~proceeds of sale for any goods sold hereunder shall be turned~~
24 ~~over to the Treasurer by the Department of Revenue as other~~
25 ~~funds collected by the department. The cost of confiscation~~
26 ~~and sale shall be paid out of the proceeds derived from the~~
27 ~~sale before making remittance to the Treasurer~~ destruction.

1 Any of the goods, wares, or merchandise when offered for sale,
2 either at wholesale or retail without the stamps having been
3 first affixed, or in the case of products not requiring a
4 stamp to be affixed where purchase invoices do not itemize the
5 applicable tobacco taxes, shall be subject to confiscation as
6 hereinabove provided. Any untaxed cigarettes, smoking tobacco,
7 cigars, stogies, cheroots, chewing tobacco, snuff, or other
8 products taxable under this article found at any location
9 within the State of Alabama, other than the primary location
10 of the permitted wholesaler or jobber, registered semijobber,
11 registered retailer or tobacco products manufacturer who
12 stores tobacco products at a bonded warehouse in this state
13 for resale, are declared to be contraband goods, and those
14 goods may be seized by the Department of Revenue, or its
15 agents or by any peace officer of the State of Alabama,
16 without a warrant and the goods shall be delivered to the
17 Department of Revenue for destruction. Any vehicle, not a
18 common carrier, used for the transportation for the purpose of
19 sale of unstamped articles as hereinabove enumerated shall
20 likewise be subject to confiscation and sale ~~in the same~~
21 ~~manner as above provided for unstamped goods, wares, or~~
22 ~~merchandise~~ at public auction to the highest bidder after due
23 advertisement and notice to the title owner of the vehicle.
24 The proceeds of sale for any vehicle sold hereunder shall be
25 deposited into the State Treasury by the Department of Revenue
26 to be credited in the same manner as the tax otherwise due on
27 the tobacco products being transported. The cost of

1 confiscation and sale shall be paid out of the proceeds
2 derived from the sale before making remittance to the
3 Treasurer. Should any unstamped tobaccos be found in any
4 vehicle which is engaged in the sale, distribution, or
5 delivery of taxable tobaccos, the same shall be prima facie
6 evidence that it was there for sale.

7 "§40-25-9.

8 "In all cases of seizure of any goods, wares,
9 merchandise or other property hereafter made as being subject
10 to forfeiture under provisions of this article ~~which in the~~
11 ~~opinion of the officer, or person making the seizure, are of~~
12 ~~the appraised value of \$50 or more,~~ the said officer or person
13 shall proceed as follows:

14 "(1) He shall cause a list containing a particular
15 description of the goods, wares, merchandise or other property
16 seized to be prepared in duplicate ~~and an appraisement thereof~~
17 ~~to be made by three sworn appraisers to be selected by him,~~
18 ~~who shall be respectable and disinterested citizens of the~~
19 ~~State of Alabama, residing within the county wherein the~~
20 ~~seizure was made.~~ Said list ~~and appraisement~~ shall be properly
21 attested by said officer, ~~or person,~~ and the said appraisers,
22 ~~for which service each of said appraisers shall be allowed the~~
23 ~~sum of \$1 per day, not exceeding two days, to be paid by the~~
24 ~~Department of Revenue out of any revenue received by it from~~
25 ~~the sale of the confiscated goods or the compromise which may~~
26 ~~be effected.~~

1 "~~(2) If the said goods are believed by the officer~~
2 ~~making the seizure to be of value of less than \$50, no~~
3 ~~appraisement shall be made. The said officer, or person,~~
4 Department of Revenue shall then proceed to post a notice for
5 three weeks, ~~in writing at three places in the county where~~
6 ~~the seizure was made,~~ on its web site describing the articles
7 and stating the time and place and cause of their seizure and
8 requiring any person claiming them to appear and make such
9 claim in writing within 30 days from the date of the first
10 posting of such notice.

11 "(3) Any person claiming the said goods, wares or
12 merchandise or other property so seized as contraband within
13 the time specified in the notice may file with the Department
14 of Revenue a claim in writing, stating his interest in the
15 articles seized and may execute a bond to the Department of
16 Revenue in a penal sum equal to double the value of said goods
17 so seized, but in no case shall said bond be less than the sum
18 of \$200, with sureties to be approved by the clerk of the
19 circuit court in the county in which the goods are seized,
20 conditioned that in the case of condemnation of the articles
21 so seized, the obligors shall pay to the Department of Revenue
22 the full value of the goods so seized and all costs and
23 expenses of the proceedings to obtain such condemnation,
24 including a reasonable attorney's fee. And upon the delivery
25 of such bond to the Department of Revenue, it shall transmit
26 the same with the duplicate list or description of the goods
27 seized to the district attorney of the circuit in which such

1 seizure was made, and the said district attorney shall file a
2 complaint in the circuit court of the county where the seizure
3 was made to secure the forfeiture of said goods, wares,
4 merchandise or other property. Upon the filing of the bond
5 aforesaid the said goods shall be delivered to the claimant
6 pending the outcome of said case; provided, that said claimant
7 must purchase the proper stamps to be affixed to each article
8 of tobacco before the goods are delivered to the claimant by
9 the Department of Revenue ~~goods must have the proper stamps~~
10 ~~affixed to each such article of tobacco before turning same~~
11 ~~over to claimant, the stamps so affixed to be paid for by~~
12 ~~claimant when goods properly stamped are delivered by the~~
13 ~~Department of Revenue.~~

14 "(4) If no claim is interposed and no bond given
15 within the time above specified, such goods, wares,
16 merchandise or other property shall be forfeited without
17 further proceedings and the same shall be destroyed, if
18 tobacco goods, or sold as herein provided at auction, if a
19 vehicle. The proceeds of sale when received by the Department
20 of Revenue shall be turned in to the Treasury as other
21 revenues are required by law to be turned in. ~~In seizure in~~
22 ~~quantities of less value than \$50, the same may be advertised~~
23 ~~with other quantities at Montgomery, Alabama, by the~~
24 ~~Department of Revenue and disposed of as hereinabove provided.~~
25 The proceedings against goods, merchandise or other property
26 pursuant to the provisions of this article shall be considered
27 as proceedings in rem unless otherwise provided. Should the

1 Department of Revenue have to resort to the courts for
2 collection of the tax due and assessed, no advertisement shall
3 be made and the confiscated tobaccos may be held as evidence
4 pending the results of court action.

5 "§40-25-13.

6 "It shall be the duty of every person, firm,
7 corporation, club, or association of persons, receiving,
8 storing, selling, or handling tobacco products enumerated
9 herein in any manner whatsoever to keep and preserve all
10 invoices, books, papers, cancelled checks, or other memoranda
11 touching the purchase, sale, exchange, or receipt of any and
12 all tobacco products enumerated herein. All such invoices,
13 books, papers, cancelled checks, or other memoranda shall be
14 subject to audit and inspection by any duly authorized
15 representative of the Department of Revenue at any and all
16 times. Each operator of a retail outlet shall receive,
17 examine, and retain the purchase invoice from the source of
18 the tobacco products for every purchase of tobacco products
19 for a period of 90 days at the retail location. At the end of
20 the 90 days, the purchase records shall be maintained with the
21 required books and records for a period of three years from
22 the date of purchase. Invoices received by the retailer dealer
23 must be computer or machine generated and must show the
24 seller's or supplier's name. Invoices cannot be handwritten.
25 Failure to acquire appropriate invoices, substantiate tax
26 payment or retain invoices in the above manner may result in
27 confiscation of the tobacco products in accordance with the

1 procedures of this chapter. Any person, firm, corporation,
2 club, or association of persons who fails or refuses to keep
3 and preserve the records as herein required, or who upon
4 request by a duly authorized agent of the Department of
5 Revenue fails or refuses to allow an audit or inspection of
6 records as hereinabove provided ~~shall be guilty of a~~
7 ~~misdemeanor and shall upon conviction be punished by a fine of~~
8 ~~not less than \$50 nor more than \$200, or imprisonment in the~~
9 ~~county jail for a period not to exceed 90 days for each~~
10 ~~offense~~ may result in a department imposed penalty of not less
11 than five hundred dollars (\$500) nor more than one thousand
12 dollars (\$1,000). This penalty is multiplied by the number of
13 violations of this subsection.

14 "§40-25-20.

15 "Any person, firm, corporation, club, or association
16 of persons, who shall reuse or refill with any tobacco
17 products enumerated herein any box, package or container from
18 which tobacco products theretofore tax-paid have been removed,
19 ~~shall be guilty of a misdemeanor and upon conviction shall be~~
20 ~~fined not less than \$100 nor more than \$500 or imprisoned not~~
21 ~~to exceed six months, either or both, at the discretion of the~~
22 ~~court~~ or who otherwise violates any provision of this chapter,
23 may be subject to a department imposed penalty of not less
24 than five hundred dollars (\$500) nor more than one thousand
25 dollars (\$1,000). This penalty is multiplied by the number of
26 violations of this subsection.

27 "§40-2A-10.

1 "(a) Except as otherwise provided in this section,
2 it shall be unlawful for any person to print, publish, or
3 divulge, without the written permission or approval of the
4 taxpayer, the return of any taxpayer or any part of the
5 return, or any information secured in arriving at the amount
6 of tax or value reported, for any purpose other than the
7 proper administration of any matter administered by the
8 department, a county, or a municipality, or upon order of any
9 court, or as otherwise allowed in this section. Statistical
10 information pertaining to taxes may be disclosed at the
11 discretion of the commissioner or his or her delegate to the
12 legislative or executive branch of the state. Upon request,
13 the commissioner or his or her delegate may make written
14 disclosure as to the status of compliance of entities subject
15 to the requirements contained in Chapter 14, prior to its
16 repeal, and Chapter 14A, as applicable. A good standing
17 certificate shall be issued to a requesting person with
18 respect to a business entity if the entity has filed all state
19 tax returns required under Chapter 14, prior to its repeal,
20 and Chapter 14A, as applicable, and paid the taxes shown as
21 payable in accordance with those returns. Any person found
22 guilty of violating this section shall, for each act of
23 disclosure, have committed a Class A misdemeanor.
24 Additionally, to the extent provided in 26 U.S.C. § 7213A, it
25 shall be unlawful for any state employee willfully to inspect,
26 except as authorized in 26 U.S.C. § 6103, any federal tax
27 return or federal tax return information acquired by the

1 employee or another person under a provision of 26 U.S.C. §
2 6103 referred to in 26 U.S.C. § 7213(a)(2).

3 "(b) This section shall not apply to returns filed
4 and information secured under laws of the state (1) governing
5 the registration and titling of motor vehicles, (2) levying or
6 imposing excise taxes or inspection fees upon the sale of,
7 use, and other disposition of gasoline and other petroleum
8 products, (3) governing the licensing of motor vehicle
9 dealers, reconditioners, rebuilders, wholesalers, and
10 automotive dismantlers and parts recyclers, (4) governing the
11 privilege licenses as provided in Chapter 12, other than
12 Article 4, of this title or (5) governing the issuance or
13 affixing of tobacco stamps and governing the online web site
14 listing of permitted and registered tobacco distributors
15 required under Chapter 25.

16 "(c) This section shall not apply to the disclosure
17 of the amount of local privilege license or franchise fees
18 paid to counties and municipalities by any taxpayer possessing
19 a franchise (whether or not exclusive) granted by the
20 respective county or municipality. However, any information
21 other than the amount of license or franchise fees paid,
22 including returns or parts thereof or documents filed with or
23 secured by any municipality or county or their authorized
24 agent and relating to local privilege licenses and franchises
25 shall remain confidential information subject to subsection
26 (a).

1 "(d) Except as otherwise provided in subsection (m)
2 of Section 40-2A-9, the orders of the administrative law judge
3 and all evidence, pleadings, and any other information offered
4 or submitted in any appeal before the Administrative Law
5 Division are not subject to this section.

6 "(e) The commissioner shall promulgate reasonable
7 regulations permitting and governing the exchange of tax
8 returns, information, records, and other documents secured by
9 the department, with tax officers of other agencies of the
10 state, municipal, and county government agencies in the state,
11 federal government agencies, any association of state
12 government tax agencies, any state government tax agencies of
13 other states, and any foreign government tax agencies.

14 However, (1) any tax returns, information, records, or other
15 documents remain subject to the confidentiality provisions set
16 forth in subsection (a); (2) the department may charge a
17 reasonable fee for providing information or documents for the
18 benefit of self-administered counties and municipalities; (3)
19 self-administered counties and municipalities may charge a
20 reasonable fee for providing information or documents for the
21 benefit of the department; and (4) any exchange shall be for
22 one or more of the following purposes:

23 "a. Collecting taxes due.

24 "b. Ascertaining the amount of taxes due from any
25 person.

26 "c. Determining whether a person is liable for, or
27 whether there is probable cause for believing a person might

1 be liable for, the payment of any tax to a federal, state,
2 county, municipal, or foreign government agency.

3 "(f) (1) Nothing herein shall prohibit the use of tax
4 returns or tax information by the department or county tax
5 collecting officials in the proper administration of any
6 matter administered by the department or county tax collecting
7 officials. The department, a municipality, or county tax
8 official may also divulge to a purchaser, prospective
9 purchaser, as defined pursuant to the regulations of the
10 department, or successor of a business or stock of goods the
11 outstanding sales, use, or rental tax liability of the seller
12 for which the purchaser, prospective purchaser, as defined
13 pursuant to the regulations of the department, or successor
14 may be liable pursuant to Section 40-23-25, 40-23-82, or
15 40-12-224. This section shall not preclude the inspection of
16 returns by federal or foreign state agents pursuant to Section
17 40-18-53.

18 "(2) Upon a request by the State Treasurer, the
19 commissioner may provide the State Treasurer with the names
20 and addresses of those persons entitled to property acquired
21 by the state under Article 2 of Chapter 12 of Title 35, the
22 Uniform Disposition of Unclaimed Property Act. The information
23 shall be used by the State Treasurer solely for the purpose of
24 administering the Uniform Disposition of Unclaimed Property
25 Act.

26 "(g) Nothing herein shall prohibit the exchange of
27 information between and among county or municipal governments,

1 provided that any exchange shall be subject to the same
2 restrictions and criminal penalties imposed on the department
3 and its personnel as described in this section.

4 "(h) In no event shall any damages, attorney fees,
5 or court costs be assessed against the state, a county, or a
6 municipal government under this section, nor shall any
7 damages, attorney fees, or court costs be assessed against
8 elected officials, officers, or employees of a state, county,
9 or municipal government."

10 Section 2. Section 40-25-16.1 is added to Chapter
11 25, Title 40 of the Code of Alabama 1975, as follows:

12 §40-25-16.1. Additional reporting requirements and
13 web site listing.

14 Each wholesaler, jobber, semijobber, registered
15 retailer, importer or any other person selling, receiving, or
16 distributing tobacco products in this state for resale shall
17 file a report of its activity to the Department of Revenue
18 between the first and twentieth of each month. The information
19 shall include, but not be limited to, the customer's name,
20 address, invoice number, invoice date, a description of the
21 tobacco products, the itemized tax, and any other information
22 required by the department.

23 No later than 90 days after the passage of the act
24 adding this section, the commissioner shall establish a web
25 site for listing each wholesaler, jobber, semijobber,
26 retailer, importer, or distributor of tobacco products that
27 have qualified or registered with the Department of Revenue.

1 Purchases of tobacco products made from an entity other than
2 the above permitted or registered entities appearing on the
3 department web site listing shall be subject to confiscation,
4 as provided for in this chapter.

5 Section 3. The provisions of this act are severable.
6 If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 4. All laws or parts of laws which conflict
10 with this act are repealed.

11 Section 5. This act shall become effective on ~~the~~
12 ~~first day of the third month~~ October 1, 2014, following its
13 passage and approval by the Governor, or its otherwise
14 becoming law.

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Commerce and Small Business..... 04-FEB-14

Read for the second time and placed on the calendar 1 amendment 12-FEB-14

Read for the third time and passed as amended..... 20-FEB-14

Yeas 98, Nays 0, Abstains 0

Jeff Woodard
Clerk