

1 HB104
2 196336-1
3 By Representatives Brown (C) and Stringer (N & P)
4 RFD: Mobile County Legislation
5 First Read: 05-MAR-19

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Mobile County; to provide for the local
14 collection and enforcement of all county privilege, license,
15 or excise taxes on the sale, distribution, storage, use, or
16 other consumption of tobacco products in the county.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall only apply to Mobile
19 County.

20 Section 2. For the purposes of this act, the
21 following words shall have the following meanings:

22 (1) BUSINESS RECORDS. All invoices, receipts,
23 ledgers, inventories, tax returns, balance sheets, reports,
24 and documents of every type, whether prepared or maintained on
25 paper or electronically.

26 (2) CIGARS, CHERROOTS, STOGIES, ETC. A roll for
27 smoking that is of any size or shape and that is made wholly

1 or in part of tobacco or any substitute therefor, irrespective
2 of whether the tobacco is pure or flavored, adulterated or
3 mixed with any other ingredient, if the roll has a wrapper
4 made wholly or in part of tobacco.

5 (3) CHEWING TOBACCO. All chewing tobacco prepared in
6 such manner as to be suitable for chewing only and not
7 suitable for smoking.

8 (4) FILTERED CIGARS. Filtered cigars that have a
9 cellulose acetate or similar integrated filter, made of
10 tobacco, or any substitute therefor, and weighing more than
11 three pounds per 1,000.

12 (5) LITTLE CIGARS. Cigars of all descriptions,
13 including filtered cigars, made of tobacco, or any substitute
14 therefor, and weighing not more than three pounds per 1,000.

15 (6) OTHER TOBACCO PRODUCTS. Cigars made of tobacco
16 or any substitute therefor, including cigarette-sized or
17 near-cigarette-sized cigars, smoking tobacco or hookah,
18 chewing tobacco, snuff, rolling papers, tubes, wraps, or cones
19 designed for tobacco consumption.

20 (7) RETAIL DEALER. Every person, firm, or
21 corporation, other than a wholesale dealer or jobber, who
22 shall sell or offer for sale any one or more of the articles
23 taxed herein, irrespective of quantity or amount, or the
24 number of sales; and all persons operating under a retail
25 dealer's license.

26 (8) SEMIJOBBER. Persons, firms, or corporations who
27 buy tobacco products from permitted wholesalers or obtain

1 tobacco from any other source and sell at wholesale any one or
2 more of the articles taxed herein to licensed retail dealers
3 for the purpose of resale only.

4 (9) STAMPS. The stamp or stamps by the use of which
5 tax is levied under this act.

6 (10) SMOKING TOBACCO. All smoking tobacco, including
7 granulated, plug cut, crimp cut, ready rubbed, and other kinds
8 and forms of tobacco prepared in such manner as to be suitable
9 for smoking in a pipe or cigarette.

10 (11) WHOLESALE DEALER AND JOBBER. Persons, firms, or
11 corporations who buy tobacco products direct from the
12 manufacturer or an affiliate of the manufacturer and sell at
13 wholesale only, any one or more of the articles taxed herein
14 to licensed wholesale dealers, jobbers, semijobbers, and
15 retail dealers for the purpose of resale only.

16 Section 3. This act applies to the collection and
17 enforcement of all county privilege, license, or excise taxes
18 levied or authorized to be levied by local law, or resolution
19 of the Mobile County Commission on the sale, distribution,
20 storage, use, or otherwise consumption of cigarette and other
21 tobacco products in the county whether collected by the State
22 Department of Revenue or the Mobile County Commission prior to
23 the effective date of this act and set out below in the total,
24 cumulative amount of tax on each item:

25 (a) Twenty cents (\$.20) for each package of
26 cigarettes made of tobacco or any substitute therefor.

1 (b) Twenty-one cents (\$.21) for each cigar stick of
2 any description made of tobacco or any substitute therefor,
3 with the exception of cigarette-sized or near-cigarette-sized
4 cigars which shall be taxed at the same rate as cigarettes.

5 (c) Twenty-three cents (\$.23) for each sack, can,
6 package, or other container of smoking tobacco, including
7 granulated, plug cut, crimp cut, ready rubbed, and other kinds
8 and forms of tobacco which are prepared in such a manner as to
9 be suitable for smoking in a pipe or cigarette.

10 (d) Twenty-three cents (\$.23) for each sack, plug,
11 package, or other container of chewing tobacco, which tobacco
12 is prepared in such manner as to be suitable for chewing only
13 and not suitable for smoking as described in subsection (c) of
14 this section.

15 (e) Twenty-three cents (\$.23) for each can, bottle,
16 glass, tumbler, package, or other container of snuff made of
17 tobacco or any substitute therefor.

18 (f) Thirty-four cents (\$.34) for each package of
19 tobacco paper, both gummed and ungummed.

20 Section 4. All county privilege, license, or excise
21 taxes levied or authorized to be levied by local law or
22 resolution of the Mobile County Commission, in Mobile County
23 on the sale, distribution, storage, use, or otherwise
24 consumption of all tobacco products in the county shall be
25 collected after the effective date of this act by Mobile
26 County in accordance with and subject to the procedures
27 provided in this act.

1 Section 5. In Mobile County, every person, firm,
2 corporation, club, or association that sells, stores, or
3 receives for distribution or sale any cigarettes, cigars,
4 cheroots, stogies, smoking tobacco, chewing tobacco, snuff, or
5 any substitute thereof, as defined in Section 42-25-1, Code of
6 Alabama 1975, shall add the amount of the license or privilege
7 tax levied and assessed to the price of the product. The
8 dealer, storer, or distributor shall state the amount of the
9 tax separately from the price of the tobacco product.

10 Section 6. Every wholesale dealer shall, at the time
11 of selling or delivering any cigarettes or other tobacco
12 products enumerated in this act, within Mobile County, make a
13 true duplicate invoice of the same, which shall show full and
14 complete details of the sale or delivery of the cigarettes or
15 other tobacco products, and shall retain the same, subject to
16 the use and inspection of the Mobile County Tobacco Tax
17 Collector or his or her duly authorized deputy, for a period
18 of three years. Wholesale and retail dealers shall also keep a
19 record of the purchase, sale, exchange, or receipt of all the
20 cigarettes or other tobacco products, and hold all books,
21 records, canceled checks, and all other memoranda pertaining
22 to the purchase, sales, exchange, or receipt for the period
23 mentioned herein, subject to the inspection of the Mobile
24 County Tobacco Tax Collector or his or her duly authorized
25 deputy, who shall have the power and authority to enter upon
26 the premises of any dealer and to examine such the business
27 records at all reasonable times. Wholesale and retail dealers

1 shall also keep a record of the purchases of all cigarettes or
2 other tobacco products enumerated herein and hold all books,
3 records, and memoranda pertaining to the purchase of the
4 cigarettes or other tobacco products enumerated herein, open
5 to the inspection of the Mobile County Tobacco Tax Collector
6 or his or her deputy, at any and all times.

7 Section 7. Every wholesale dealer shall furnish to
8 the Mobile County Tobacco Tax Collector a monthly report,
9 between the 1st and 20th of each month, for the preceding
10 month, of the sale or delivery of all cigarettes or other
11 tobacco products made in Mobile County, and of all orders for
12 cigarettes or other tobacco products as enumerated herein
13 purchased through the wholesale dealer from without Mobile
14 County on a drop shipment, and consigned direct to the person,
15 firm, corporation, or association of person ordering such
16 cigarettes or other tobacco products from without this county
17 through the wholesaler dealer. Any retail dealer or semijobber
18 of cigarettes or other tobacco products enumerated herein,
19 purchasing or receiving such commodities from without the
20 county, whether the same shall have been ordered or purchased
21 through a wholesaler or jobber in this county, or by drop
22 shipment or otherwise, shall within three days of receipt of
23 the cigarettes or other tobacco products, mail by registered
24 mail a true duplicate invoice of all the purchases or receipts
25 to the Mobile County Tobacco Tax Collector, the invoice
26 carrying the name of the person or firm from whom or through
27 whom the purchases or shipments of the cigarettes or other

1 tobacco products so received, showing kinds and quantities.
2 Any person who purchases or receives in any manner whatsoever,
3 any of the cigarettes or other tobacco products enumerated in
4 this act which do not have affixed the stamps required by this
5 act, within three days after receipt of the cigarettes or
6 other tobacco products, shall report the receipt and purchase
7 of the cigarettes or other tobacco products to the Mobile
8 County Tobacco Tax Collector, giving the date of purchase or
9 receipt, the name and address of the person or firm from whom
10 it was purchased or received, and a list describing the
11 cigarettes or other tobacco products purchased or received.
12 The report must be made by registered mail or in person.

13 Section 8. It shall be unlawful for any dealer,
14 storer, or distributor engaged in or continuing in Mobile
15 County in the business for which the tax is levied to fail or
16 refuse to add to the sales price and collect from the
17 purchaser the amount due on the tax authorized in this act or
18 to refund or offer to refund all or any part of the amount
19 collected or absorb or advertise directly or indirectly the
20 absorption of the tax or any portion thereof.

21 Section 9. Any retail dealer or semijobber of
22 tobacco products enumerated and defined in this act purchasing
23 or receiving the commodities from without the state, whether
24 the same shall have been ordered or purchased through a
25 wholesaler or jobber in this state, or by drop shipment or
26 otherwise, shall within three days of receipt of such tobacco
27 products, provide electronically, a true duplicate invoice of

1 all such purchases or receipts to the Mobile County Tobacco
2 Tax Collector, the invoice carrying the name of the person or
3 firm from whom or through whom such purchases or shipments of
4 the tobacco products so received, showing kinds and
5 quantities. Any retail dealer or semijobber failing or
6 refusing to furnish duplicate invoices, in both the manner and
7 time allowed, may be subject to a county imposed penalty of
8 not less than one thousand dollars (\$1,000) nor more than five
9 thousand dollars (\$5,000), to be multiplied by the sum of the
10 current violation plus prior violations of this section.
11 Tobacco products imported by retail dealers and semijobbers in
12 which a true and duplicate invoice has not been received by
13 the county are considered contraband and subject to
14 confiscation as provided for by law.

15 Section 10. Any person, firm, corporation, club, or
16 association failing to affix required stamps, or account and
17 collect the taxes enumerated in Section 2, shall on a first
18 offense pay a civil penalty of not less than twenty-five
19 dollars (\$25) per item nor more than five hundred dollars
20 (\$500) per item. Penalty payments shall be made to the Mobile
21 County Tobacco Tax Collector within 30 days of notice of the
22 penalty and paid to the General Fund of the County. For a
23 second offense under this act, there shall be a civil penalty
24 of not less than one hundred dollars (\$100) per item, nor more
25 than five hundred dollars (\$500) per item. For a third
26 offense, the Mobile County Commission shall recommend to the

1 State Department of Revenue that the State Business License be
2 revoked for a period of one year.

3 Section 11. The Mobile County Tobacco Tax Collector
4 shall have the duties relative to the preparation and sale of
5 stamps to evidence the payment of the tax on products suitable
6 for affixing the stamp. In the event tobacco stamps are not
7 available, or not suitable for affixing to certain tobacco
8 products, the Mobile County Commission shall require a monthly
9 report in lieu of stamps to report the amount of tax due. The
10 monthly report shall be in a form approved and adopted by the
11 Mobile County Commission.

12 Section 12. Any product taxable by law found not
13 having affixed to the package the stamps, or in the case of
14 products not requiring a stamp to be affixed where purchase
15 invoices do not itemize the applicable tobacco taxes, are
16 declared to be contraband goods and may be seized by the
17 Mobile County Tobacco Tax Collector without a warrant and the
18 goods delivered to Mobile County for destruction.

19 Section 13. The Mobile County Commission may adopt
20 rules to effectuate the purposes of this act and conform to
21 the provisions of Chapter 25 of Title 40, Code of Alabama
22 1975. On the effective date of this act, the Mobile County
23 Commission shall publish a notice to all tobacco wholesalers
24 and retailers consistent with Act 2014-262, effective October
25 1, 2014, and the State Department of Revenue memo to all
26 tobacco wholesalers and retailers of June 11, 2014.

1 Section 14. Taxes, penalties, and fines assessed
2 pursuant to this act shall constitute a debt due to Mobile
3 County, may be collected by civil suit, and shall be secured
4 by a lien, superior to all other liens except the liens for
5 state and city ad valorem taxes upon the personal property of
6 any person subject to the provisions of this act.

7 Section 15. All other provisions of prior local laws
8 not inconsistent with this act are confirmed. All laws or
9 parts of laws which conflict with this act are repealed.

10 Section 16. This act shall become effective October
11 1, 2019, upon its passage and approval by the Governor, or
12 upon its otherwise becoming law.