

1 SB274  
2 218150-3  
3 By Senator Livingston  
4 RFD: Agriculture, Conservation and Forestry  
5 First Read: 01-MAR-22

1 SB274

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3  
4 ENROLLED, An Act,

5 Related to sales tax; to amend Sections 40-23-1 and  
6 40-23-4, Code of Alabama 1975; to exempt producer value added  
7 products from sales tax.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. This bill shall be known as the "Sweet  
10 Grown Alabama Act."

11 Section 2. Sections 40-23-1 and 40-23-4, Code of  
12 Alabama 1975, are amended to read as follows:

13 "§40-23-1.

14 "(a) For the purpose of this division, the following  
15 terms shall have the respective meanings ascribed by this  
16 section:

17 "(1) PERSON or COMPANY. Used interchangeably,  
18 includes any individual, firm, copartnership, association,  
19 corporation, receiver, trustee, or any other group or  
20 combination acting as a unit and the plural as well as the  
21 singular number, unless the intention to give a more limited  
22 meaning is disclosed by the context.

23 "(2) DEPARTMENT. The Department of Revenue of the  
24 State of Alabama.

1           "(3) COMMISSIONER. The Commissioner of Revenue of  
2 the State of Alabama.

3           "(4) TAX YEAR or TAXABLE YEAR. The calendar year.

4           "(5) SALE or SALES. Installment and credit sales and  
5 the exchange of properties as well as the sale thereof for  
6 money, every closed transaction constituting a sale. Provided,  
7 however, a transaction shall not be closed or a sale completed  
8 until the time and place when and where title is transferred  
9 by the seller or seller's agent to the purchaser or  
10 purchaser's agent, and for the purpose of determining transfer  
11 of title, a common carrier or the U.S. Postal Service shall be  
12 deemed to be the agent of the seller, regardless of any F.O.B.  
13 point and regardless of who selects the method of  
14 transportation, and regardless of by whom or the method by  
15 which freight, postage, or other transportation charge is  
16 paid. Provided further that, where billed as a separate item  
17 to and paid by the purchaser, the freight, postage, or other  
18 transportation charge paid to a common carrier or the U.S.  
19 Postal Service is not a part of the selling price.

20           "(6) GROSS PROCEEDS OF SALES. The value proceeding  
21 or accruing from the sale of tangible personal property, and  
22 including the proceeds from the sale of any property handled  
23 on consignment by the taxpayer, including merchandise of any  
24 kind and character without any deduction on account of the  
25 cost of the property sold, the cost of the materials used,

1 labor or service cost, interest paid, any consumer excise  
2 taxes that may be included within the sales price of the  
3 property sold, or any other expenses whatsoever, and without  
4 any deductions on account of losses; provided, that cash  
5 discounts allowed and taken on sales shall not be included,  
6 and "gross proceeds of sales" shall not include the sale price  
7 of property returned by customers when the full sales price  
8 thereof is refunded either in cash or by credit. The term  
9 "gross proceeds of sale" shall also mean and include the  
10 reasonable and fair market value of any tangible personal  
11 property previously purchased at wholesale which is withdrawn  
12 or used from the business or stock and used or consumed in  
13 connection with a business, and shall also mean and include  
14 the reasonable and fair market value of any tangible personal  
15 property previously purchased at wholesale which is withdrawn  
16 from the business or stock and used or consumed by any person  
17 so withdrawing the same, except property which has been  
18 previously withdrawn from business or stock and so used or  
19 consumed with respect to which property the tax has been paid  
20 because of previous withdrawal, use, or consumption, except  
21 property which enters into and becomes an ingredient or  
22 component part of tangible personal property or products  
23 manufactured or compounded for sale and not for the personal  
24 and private use or consumption of any person so withdrawing,  
25 using, or consuming the same, and except refinery, residue, or

1 fuel gas, whether in a liquid or gaseous state, that has been  
2 generated by, or is otherwise a by-product of, a  
3 petroleum-refining process, which gas is then utilized in the  
4 process to generate heat or is otherwise utilized in the  
5 distillation or refining of petroleum products.

6 "In the case of the retail sale of equipment,  
7 accessories, fixtures, and other similar tangible personal  
8 property used in connection with the sale of commercial mobile  
9 services as defined herein, or in connection with satellite  
10 television services, at a price below cost, "gross proceeds of  
11 sale" shall only include the stated sales price thereof and  
12 shall not include any sales commission or rebate received by  
13 the seller as a result of the sale. As used herein, the term  
14 "commercial mobile services" shall have the same meaning as  
15 that term has in 47 U.S.C. Sections 153(n) and 332(d), as in  
16 effect from time to time.

17 "(7) TAXPAYER. Any person liable for taxes  
18 hereunder.

19 "(8) GROSS RECEIPTS. The value proceeding or  
20 accruing from the sale of tangible personal property,  
21 including merchandise and commodities of any kind and  
22 character, all receipts actual and accrued, by reason of any  
23 business engaged in, not including, however, interest,  
24 discounts, rentals of real estate or royalties, and without  
25 any deduction on account of the cost of the property sold, the

1 cost of the materials used, labor or service cost, interest  
2 paid, any consumer excise taxes that may be included in the  
3 sales price of the property sold, or any other expenses  
4 whatsoever and without any deductions on account of losses.  
5 The term "gross receipts" shall also mean and include the  
6 reasonable and fair market value of any tangible personal  
7 property previously purchased at wholesale which is withdrawn  
8 or used from the business or stock and used or consumed in  
9 connection with a business, and shall also mean and include  
10 the reasonable and fair market value of any tangible personal  
11 property previously purchased at wholesale which is withdrawn  
12 from the business or stock and used or consumed by any person  
13 so withdrawing the same, except property which has been  
14 previously withdrawn from business or stock and so used or  
15 consumed and with respect to which property the tax has been  
16 paid because of previous withdrawal, use, or consumption,  
17 except property which enters into and becomes an ingredient or  
18 component part of tangible personal property or products  
19 manufactured or compounded for sale as provided in subdivision  
20 (9) and not for the personal and private use or consumption of  
21 any person so withdrawing, using, or consuming the same, and  
22 except refinery, residue, or fuel gas, whether in a liquid or  
23 gaseous state, that has been generated by, or is otherwise a  
24 by-product of, a petroleum-refining process, which gas is then  
25 utilized in the process to generate heat or is otherwise

1 utilized in the distillation or refining of petroleum  
2 products.

3 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of  
4 the following:

5 "a. A sale of tangible personal property by  
6 wholesalers to licensed retail merchants, jobbers, dealers, or  
7 other wholesalers for resale and does not include a sale by  
8 wholesalers to users or consumers, not for resale.

9 "b. A sale of tangible personal property or  
10 products, including iron ore, and including the furnished  
11 container and label of such property or products, to a  
12 manufacturer or compounder which enter into and become an  
13 ingredient or component part of the tangible personal property  
14 or products which the manufacturer or compounder manufactures  
15 or compounds for sale, whether or not such tangible personal  
16 property or product used in manufacturing or compounding a  
17 finished product is used with the intent that it becomes a  
18 component of the finished product; provided, however, that it  
19 is the intent of this section that no sale of capital  
20 equipment, machinery, tools, or product shall be included in  
21 the term "wholesale sale." The term "capital equipment,  
22 machinery, tools, or product" shall mean property that is  
23 subject to depreciation allowances for Alabama income tax  
24 purposes.

1            "c. A sale of containers intended for one-time use  
2 only, and the labels thereof, when containers are sold without  
3 contents to persons who sell or furnish containers along with  
4 the contents placed therein for sale by persons.

5            "d. A sale of pallets intended for one-time use only  
6 when pallets are sold without contents to persons who sell or  
7 furnish pallets along with the contents placed thereon for  
8 sale by persons.

9            "e. A sale to a manufacturer or compounder, of  
10 crowns, caps, and tops intended for one-time use employed and  
11 used upon the containers in which a manufacturer or compounder  
12 markets his products.

13           "f. A sale of containers to persons engaged in  
14 selling or otherwise supplying or furnishing baby chicks to  
15 growers thereof where containers are used for the delivery of  
16 chicks or a sale of containers for use in the delivery of eggs  
17 by the producer thereof to the distributor or packer of eggs  
18 even though containers used for delivery of baby chicks or  
19 eggs may be recovered for reuse.

20           "g. A sale of bagging and ties used in preparing  
21 cotton for market.

22           "h. A sale to meat packers, manufacturers,  
23 compounders, or processors of meat products of all casings  
24 used in molding or forming wieners and Vienna sausages even  
25 though casings may be recovered for reuse.



1            "i. A sale of commercial fish feed including  
2 concentrates, supplements, and other feed ingredients when  
3 substances are used as ingredients in mixing and preparing  
4 feed for fish raised to be sold on a commercial basis.

5            "j. A sale of tangible personal property to any  
6 person engaging in the business of leasing or renting tangible  
7 personal property to others, if tangible personal property is  
8 purchased for the purpose of leasing or renting it to others  
9 under a transaction subject to the privilege or license tax  
10 levied in Article 4 of Chapter 12 of this title against any  
11 person engaging in the business of leasing or renting tangible  
12 personal property to others.

13           "k. A purchase or withdrawal of parts or materials  
14 from stock by any person licensed under this division where  
15 parts or materials are used in repairing or reconditioning the  
16 tangible personal property of a licensed person, which  
17 tangible personal property is a part of the stock of goods of  
18 a licensed person, offered for sale by him, and not for use or  
19 consumption of a licensed person.

20           "(10) SALE AT RETAIL or RETAIL SALE. All sales of  
21 tangible personal property except those above defined as  
22 wholesale sales. The quantities of goods sold or prices at  
23 which sold are immaterial in determining whether or not a sale  
24 is at retail. Sales of building materials to contractors,  
25 builders, or landowners for resale or use in the form of real

1 estate are retail sales in whatever quantity sold. Sales of  
2 building materials, fixtures, or other equipment to a  
3 manufacturer or builder of modular buildings for use in  
4 manufacturing, building, or equipping a modular building  
5 ultimately becoming a part of real estate situated in the  
6 State of Alabama are retail sales, and the use, sale, or  
7 resale of building shall not be subject to the tax. Sales of  
8 tangible personal property to undertakers and morticians are  
9 retail sales and subject to the tax at the time of purchase,  
10 but are not subject to the tax on resale to the consumer.  
11 Sales of tangible personal property or products to  
12 manufacturers, quarry operators, mine operators, or  
13 compounders, which are used or consumed by them in  
14 manufacturing, mining, quarrying, or compounding and do not  
15 become an ingredient or component part of the tangible  
16 personal property manufactured or compounded as provided in  
17 subdivision (9) are retail sales. The term "sale at retail" or  
18 "retail sale" shall also mean and include the withdrawal, use,  
19 or consumption of any tangible personal property by any one  
20 who purchases same at wholesale, except property which has  
21 been previously withdrawn from the business or stock and so  
22 used or consumed and with respect to which property tax has  
23 been paid because of previous withdrawal, use, or consumption,  
24 except property which enters into and becomes an ingredient or  
25 component part of tangible personal property or products

1 manufactured or compounded for sale as provided in subdivision  
2 (9) and not for the personal and private use or consumption of  
3 any person so withdrawing, using, or consuming the same; and  
4 wholesale purchaser shall report and pay the taxes thereon. In  
5 the case of the sale of equipment, accessories, fixtures, and  
6 other similar tangible personal property used in connection  
7 with the sale of commercial mobile services as defined in  
8 subdivision (6) above, or in connection with satellite  
9 television services, at a price below cost, the term "sale at  
10 retail" and "retail sale" shall include those sales, and those  
11 sales shall not also be taxable as a withdrawal, use, or  
12 consumption of such tangible personal property.

13 "(11) BUSINESS. All activities engaged in, or caused  
14 to be engaged in, with the object of gain, profit, benefit, or  
15 advantage, either direct or indirect, and not excepting  
16 subactivities producing marketable commodities used or  
17 consumed in the main business activity, each of which  
18 subactivities shall be considered business engaged in, taxable  
19 in the class in which it falls.

20 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,  
21 crawler, crawler crane, ditcher, or any similar machine which  
22 is self-propelled, in addition to self-propelled machines  
23 which are used primarily as instruments of conveyance.

24 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a  
25 prepaid telephone calling card or a prepaid authorization

1 number, or both, shall be deemed the sale of tangible personal  
2 property subject to the tax imposed on the sale of tangible  
3 personal property pursuant to this chapter. For purposes of  
4 this subdivision, the sale of prepaid wireless service that is  
5 evidenced by a physical card constitutes the sale of a prepaid  
6 telephone calling card, and the sale of prepaid wireless  
7 service that is not evidenced by a physical card constitutes  
8 the sale of a prepaid authorization number.

9 "(14) PREPAID WIRELESS SERVICE. The right to use  
10 mobile telecommunications service, which must be paid for in  
11 advance and that is sold in predetermined units or dollars of  
12 which the number declines with use in a known amount, and  
13 which may include rights to use non-telecommunications  
14 services or to download digital products or digital content.  
15 For purposes of this subdivision, mobile telecommunications  
16 service has the meaning ascribed by Section 40-21-120.

17 "(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid  
18 solution or other material containing nicotine that is  
19 depleted when used as a vapor product.

20 "(16) VAPOR PRODUCTS. Any non-lighted,  
21 noncombustible product that employs a mechanical heating  
22 element, battery, or electronic circuit regardless of shape or  
23 size and that can be used to produce vapor from nicotine in a  
24 solution. The term includes any vapor cartridge or other  
25 container of nicotine in a solution or other form that is

1 intended to be used with or in an electronic cigarette,  
2 electronic cigar, electronic cigarillo, electronic pipe, or  
3 similar product or device. The term does not include any  
4 product regulated by the United States Food and Drug  
5 Administration under Chapter V of the Federal Food, Drug, and  
6 Cosmetic Act.

7 "(17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS.

8 Fruits or other agricultural products that have undergone some  
9 degree of further processing by the original producer of the  
10 agricultural product, including, but not limited to, whole  
11 cuts of meat, bound cut flowers, jams, jellies, or boiled or  
12 roasted peanuts.

13 "(b) The use within this state of tangible personal  
14 property by the manufacturer thereof, as building materials in  
15 the performance of a construction contract, shall, for the  
16 purposes of this division, be considered as a retail sale  
17 thereof by manufacturer, who shall also be construed as the  
18 ultimate consumer of materials or property, and who shall be  
19 required to report transaction and pay the sales tax thereon,  
20 based upon the reasonable and fair market price thereof at the  
21 time and place where same are used or consumed by him or it.  
22 Where the contractor is the manufacturer or compounder of  
23 ready-mix concrete or asphalt plant mix used in the  
24 performance of a contract, whether the ready-mix concrete or  
25 asphalt plant mix is manufactured or compounded at the job

1 site or at a fixed or permanent plant location, the tax  
2 applies only to the cost of the ingredients that become a  
3 component part of the ready-mix concrete or the asphalt plant  
4 mix. The provisions of this subsection shall not apply to any  
5 tangible personal property which is specifically exempted from  
6 the tax levied in this division.

7 "(c) The sale of lumber by a lumber manufacturer to  
8 a trucker for resale is a sale at wholesale as sales are  
9 defined herein where the trucker is either a licensed dealer  
10 in lumber or, if a resident of Alabama, has registered with  
11 the Department of Revenue, and has received therefrom a  
12 certificate of registration or, if a nonresident of this state  
13 purchasing lumber for resale outside the State of Alabama, has  
14 furnished to the lumber manufacturer his or her name, address  
15 and the vehicle license number of the truck in which the  
16 lumber is to be transported, which name, address, and vehicle  
17 license number shall be shown on the sales invoice rendered by  
18 the lumber manufacturer. The certificate provided for herein  
19 shall be valid for the calendar year of its issuance and may  
20 be renewed from year to year on application to the Department  
21 of Revenue on or before January 31 of each succeeding year;  
22 provided, that if not renewed the certificate shall become  
23 invalid for the purpose of this division on February 1.

24 "(d) The dispensing or transferring of ophthalmic  
25 materials, including lenses, frames, eyeglasses, contact

1 lenses, and other therapeutic optic devices, to a patient by a  
2 licensed ophthalmologist, as a part of his or her professional  
3 service, shall, for purposes of this division, constitute a  
4 sale, subject to the state sales tax. The licensed  
5 ophthalmologist or licensed optometrist shall collect the  
6 state sales tax. In no event shall the providing of  
7 professional services in connection with the dispensing or  
8 transferring of ophthalmic materials, including dispensing  
9 fees or fitting fees, by a licensed ophthalmologist or  
10 licensed optometrist be considered a sale subject to the state  
11 sales tax. When the ophthalmic materials are purchased by a  
12 consumer covered by a third party benefit plan, including  
13 Medicare, the sales tax shall be applicable to the amount that  
14 the ophthalmologist, optometrist, or optician is reimbursed by  
15 the third party benefit plan plus the amount that the consumer  
16 pays to the ophthalmologist, optometrist, or optician at the  
17 time of the sale. All transfers of ophthalmic materials by  
18 opticians or optometrists shall be considered retail sales  
19 subject to the state sales tax. The term supplier shall  
20 include but not be limited to optical laboratories, ophthalmic  
21 material wholesalers, or anyone selling ophthalmic materials  
22 to ophthalmologists.

23 "(e) Notwithstanding the above, the withdrawal, use,  
24 or consumption of a manufactured product by the manufacturer  
25 thereof in quality control testing performed by employees or

1 independent contractors of the taxpayer, for purposes of this  
2 division, shall not be deemed or considered to constitute a  
3 transaction subject to sales tax, nor shall a gift by the  
4 manufacturer of a manufactured product, withdrawn from the  
5 manufacturer's inventory, to an entity listed in 26 U.S.C.  
6 Sections 170(b) or (c), be considered a transaction subject to  
7 sales tax.

8 "(f) Notwithstanding the foregoing, a gift by a  
9 retailer of a product or products where the aggregate retail  
10 value of any single gift is equal to or less than ten thousand  
11 dollars (\$10,000), withdrawn from the retailer's inventory, to  
12 an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not  
13 be deemed or considered to constitute a transaction subject to  
14 sales and use tax.

15 "§40-23-4.

16 "(a) There are exempted from the provisions of this  
17 division and from the computation of the amount of the tax  
18 levied, assessed, or payable under this division the  
19 following:

20 "(1) The gross proceeds of the sales of lubricating  
21 oil and gasoline as defined in Sections 40-17-30 and 40-17-170  
22 and the gross proceeds from those sales of lubricating oil  
23 destined for out-of-state use which are transacted in a manner  
24 whereby an out-of-state purchaser takes delivery of such oil



1 at a distributor's plant within this state and transports it  
2 out-of-state, which are otherwise taxed.

3 "(2) The gross proceeds of the sale, or sales, of  
4 fertilizer when used for agricultural purposes. The word  
5 "fertilizer" shall not be construed to include cottonseed  
6 meal, when not in combination with other materials.

7 "(3) The gross proceeds of the sale, or sales, of  
8 seeds for planting purposes and baby chicks and poults.  
9 Nothing herein shall be construed to exempt or exclude from  
10 the computation of the tax levied, assessed, or payable, the  
11 gross proceeds of the sale or sales of plants, seedlings,  
12 nursery stock, or floral products.

13 "(4) The gross proceeds of sales of insecticides and  
14 fungicides when used for agricultural purposes or when used by  
15 persons properly permitted by the Department of Agriculture  
16 and Industries or any applicable local or state governmental  
17 authority for structural pest control work and feed for  
18 livestock and poultry, but not including prepared food for  
19 dogs and cats.

20 "(5) The gross proceeds of sales of all livestock by  
21 whomsoever sold, and also the gross proceeds of poultry and  
22 other products of the farm, dairy, grove, or garden, when in  
23 the original state of production or condition of preparation  
24 for sale, when such sale or sales are made by the producer or  
25 members of his or her immediate family or for him by those

1 employed by him to assist in the production thereof. Nothing  
2 herein shall be construed to exempt or exclude from the  
3 measure or computation of the tax levied, assessed, or payable  
4 hereunder, the gross proceeds of sales of poultry or poultry  
5 products when not products of the farm.

6 "(6) Cottonseed meal exchanged for cottonseed at or  
7 by cotton gins.

8 "(7) The gross receipts from the business on which,  
9 or for engaging in which, a license or privilege tax is levied  
10 by or under the provisions of Sections 40-21-50, 40-21-53, and  
11 40-21-56 through 40-21-60; provided, that nothing contained in  
12 this subdivision shall be construed to exempt or relieve the  
13 person or persons operating the business enumerated in said  
14 sections from the payments of the tax levied by this division  
15 upon or measured by the gross proceeds of sales of any  
16 tangible personal property, except gas and water, the gross  
17 receipts from the sale of which are the measure of the tax  
18 levied by said Section 40-21-50, merchandise or other tangible  
19 commodities sold at retail by said persons, unless the gross  
20 proceeds of sale thereof are otherwise specifically exempted  
21 by the provisions of this division.

22 "(8) The gross proceeds of sales or gross receipts  
23 of or by any person, firm, or corporation, from the sale of  
24 transportation, gas, water, or electricity, of the kinds and  
25 natures, the rates and charges for which, when sold by public

1 utilities, are customarily fixed and determined by the Public  
2 Service Commission of Alabama or like regulatory bodies.

3 "(9) The gross proceeds of the sale, or sales of  
4 wood residue, coal, or coke to manufacturers, electric power  
5 companies, and transportation companies for use or consumption  
6 in the production of by-products, or the generation of heat or  
7 power used in manufacturing tangible personal property for  
8 sale, for the generation of electric power or energy for use  
9 in manufacturing tangible personal property for sale or for  
10 resale, or for the generation of motive power for  
11 transportation.

12 "(10) The gross proceeds from the sale or sales of  
13 fuel and supplies for use or consumption aboard ships,  
14 vessels, towing vessels, or barges, or drilling ships, rigs or  
15 barges, or seismic or geophysical vessels, or other watercraft  
16 (herein for purposes of this exemption being referred to as  
17 "vessels") engaged in foreign or international commerce or in  
18 interstate commerce; provided, that nothing in this division  
19 shall be construed to exempt or exclude from the measure of  
20 the tax herein levied the gross proceeds of sale or sales of  
21 material and supplies to any person for use in fulfilling a  
22 contract for the painting, repair, or reconditioning of  
23 vessels, barges, ships, other watercraft, and commercial  
24 fishing vessels of over five tons load displacement as

1 registered with the U.S. Coast Guard and licensed by the State  
2 of Alabama Department of Conservation and Natural Resources.

3 "For purposes of this subdivision, it shall be  
4 presumed that vessels engaged in the transportation of cargo  
5 between ports in the State of Alabama and ports in foreign  
6 countries or possessions or territories of the United States  
7 or between ports in the State of Alabama and ports in other  
8 states are engaged in foreign or international commerce or  
9 interstate commerce, as the case may be. For the purposes of  
10 this subdivision, the engaging in foreign or international  
11 commerce or interstate commerce shall not require that the  
12 vessel involved deliver cargo to or receive cargo from a port  
13 in the State of Alabama. For purposes of this subdivision,  
14 vessels carrying passengers for hire, and no cargo, between  
15 ports in the State of Alabama and ports in foreign countries  
16 or possessions or territories of the United States or between  
17 ports in the State of Alabama and ports in other states shall  
18 be engaged in foreign or international commerce or interstate  
19 commerce, as the case may be, if, and only if, both of the  
20 following conditions are met: (i) The vessel in question is a  
21 vessel of at least 100 gross tons; and (ii) the vessel in  
22 question has an unexpired certificate of inspection issued by  
23 the United States Coast Guard or by the proper authority of a  
24 foreign country for a foreign vessel, which certificate is  
25 recognized as acceptable under the laws of the United States.

1 Vessels that are engaged in foreign or international commerce  
2 or interstate commerce shall be deemed for the purposes of  
3 this subdivision to remain in such commerce while awaiting or  
4 under repair in a port of the State of Alabama if such vessel  
5 returns after such repairs are completed to engaging in  
6 foreign or international commerce or interstate commerce. For  
7 purposes of this subdivision, seismic or geophysical vessels  
8 which are engaged either in seismic or geophysical tests or  
9 evaluations exclusively in offshore federal waters or in  
10 traveling to or from conducting such tests or evaluations  
11 shall be deemed to be engaged in international or foreign  
12 commerce. For purposes of this subdivision, proof that fuel  
13 and supplies purchased are for use or consumption aboard  
14 vessels engaged in foreign or international commerce or in  
15 interstate commerce may be accomplished by the merchant or  
16 seller securing the duly signed certificate of the vessel  
17 owner, operator, or captain or their respective agent, on a  
18 form prescribed by the department, that the fuel and supplies  
19 purchased are for use or consumption aboard vessels engaged in  
20 foreign or international commerce or in interstate commerce.  
21 Any person filing a false certificate shall be guilty of a  
22 misdemeanor and upon conviction shall be fined not less than  
23 \$25 nor more than \$500 for each offense. Each false  
24 certificate filed shall constitute a separate offense. Any  
25 person filing a false certificate shall be liable to the

1 department for all taxes imposed by this division upon the  
2 merchant or seller, together with any interest or penalties  
3 thereon, by reason of the sale or sales of fuel and supplies  
4 applicable to such false certificate. If a merchant or seller  
5 of fuel and supplies secures the certificate herein mentioned,  
6 properly completed, such merchant or seller shall not be  
7 liable for the taxes imposed by this division, if such  
8 merchant or seller had no knowledge that such certificate was  
9 false when it was filed with such merchant or seller.

10 "(11) The gross proceeds of sales of tangible  
11 personal property to the State of Alabama, to the counties  
12 within the state and to incorporated municipalities of the  
13 State of Alabama.

14 "(12) The gross proceeds of the sale or sales of  
15 railroad cars, vessels, barges, and commercial fishing vessels  
16 of over five tons load displacement as registered with the  
17 U.S. Coast Guard and licensed by the State of Alabama  
18 Department of Conservation and Natural Resources, when sold by  
19 the manufacturers or builders thereof.

20 "(13) The gross proceeds of the sale or sales of  
21 materials, equipment, and machinery that, at any time, enter  
22 into and become a component part of ships, vessels, towing  
23 vessels or barges, or drilling ships, rigs or barges, or  
24 seismic or geophysical vessels, other watercraft and  
25 commercial fishing vessels of over five tons load displacement

1 as registered with the U.S. Coast Guard and licensed by the  
2 State of Alabama Department of Conservation and Natural  
3 Resources. Additionally, the gross proceeds from the sale or  
4 sales of lifeboats, personal flotation devices, ring life  
5 buoys, survival craft equipment, distress signals, EPIRB's,  
6 fire extinguishers, injury placards, waste management plans  
7 and logs, marine sanitation devices, navigation rulebooks,  
8 navigation lights, sound signals, navigation day shapes, oil  
9 placard cards, garbage placards, FCC SSL, stability  
10 instructions, first aid equipment, compasses, anchor and radar  
11 reflectors, general alarm systems, bilge pumps, piping, and  
12 discharge and electronic position fixing devices which are  
13 used on the aforementioned watercraft.

14 "(14) The gross proceeds of the sale or sales of  
15 fuel oil purchased as fuel for kiln use in manufacturing  
16 establishments.

17 "(15) The gross proceeds of the sale or sales of  
18 tangible personal property to county and city school boards  
19 within the State of Alabama, independent school boards within  
20 the State of Alabama, all educational institutions and  
21 agencies of the State of Alabama, the counties within the  
22 state, or any incorporated municipalities of the State of  
23 Alabama, and private educational institutions operating within  
24 the State of Alabama offering conventional and traditional  
25 courses of study, such as those offered by public schools,

1 colleges, or universities within the State of Alabama; but not  
2 including nurseries, day care centers, and home schools.

3 "(16) The gross proceeds from the sale of all  
4 devices or facilities, and all identifiable components  
5 thereof, or materials for use therein, acquired primarily for  
6 the control, reduction, or elimination of air or water  
7 pollution and the gross proceeds from the sale of all  
8 identifiable components of, or materials used or intended for  
9 use in, structures built primarily for the control, reduction,  
10 or elimination of air and water pollution.

11 "(17) The gross proceeds of sales of tangible  
12 personal property or the gross receipts of any business which  
13 the state is prohibited from taxing under the Constitution or  
14 laws of the United States or under the Constitution of this  
15 state.

16 "(18) When dealers or distributors use parts taken  
17 from stocks owned by them in making repairs without charge for  
18 such parts to the owner of the property repaired pursuant to  
19 warranty agreements entered into by manufacturers, such use  
20 shall not constitute taxable sales to the manufacturers,  
21 distributors, or to the dealers, under this division or under  
22 any county sales tax law.

23 "(19) The gross proceeds received from the sale or  
24 furnishing of food, including potato chips, candy, fruit and  
25 similar items, soft drinks, tobacco products, and stationery



1 and other similar or related articles by hospital canteens  
2 operated by Alabama state hospitals at Bryce Hospital and  
3 Partlow State School for Mental Deficients at Tuscaloosa,  
4 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the  
5 benefit of the patients therein.

6 "(20) The gross proceeds of the sale, or sales, of  
7 wrapping paper and other wrapping materials when used in  
8 preparing poultry or poultry products for delivery, shipment,  
9 or sale by the producer, processor, packer, or seller of such  
10 poultry or poultry products, including pallets used in  
11 shipping poultry and egg products, paper or other materials  
12 used for lining boxes or other containers in which poultry or  
13 poultry products are packed together with any other materials  
14 placed in such containers for the delivery, shipment, or sale  
15 of poultry or poultry products.

16 "(21) The gross proceeds of the sales of all  
17 antibiotics, hormones and hormone preparations, drugs,  
18 medicines or medications, vitamins, minerals or other  
19 nutrients, and all other feed ingredients including  
20 concentrates, supplements, and other feed ingredients when  
21 such substances are used as ingredients in mixing and  
22 preparing feed for fish raised to be sold on a commercial  
23 basis, livestock, and poultry. Such exemption herein granted  
24 shall be in addition to exemptions now provided by law for  
25 feed for fish raised to be sold on a commercial basis,

1 livestock, and poultry, but not including prepared foods for  
2 dogs or cats.

3 "(22) The gross proceeds of the sale, or sales, of  
4 seedlings, plants, shoots, and slips which are to be used for  
5 planting vegetable gardens or truck farms and other  
6 agricultural purposes. Nothing herein shall be construed to  
7 exempt, or exclude from the computation of the tax levied,  
8 assessed, or payable, the gross proceeds of the sale, or the  
9 use of plants, seedlings, shoots, slips, nursery stock, and  
10 floral products, except as hereinabove exempted.

11 "(23) The gross proceeds of the sale, or sales, of  
12 fabricated steel tube sections, when produced and fabricated  
13 in this state by any person, firm, or corporation for any  
14 vehicular tunnel for highway vehicular traffic, when sold by  
15 the manufacturer or fabricator thereof, and also the gross  
16 proceeds of the sale, or sales, of steel which enters into and  
17 becomes a component part of such fabricated steel tube  
18 sections of said tunnel.

19 "(24) The gross proceeds from sales of admissions to  
20 any theatrical production, symphonic or other orchestral  
21 concert, ballet, or opera production when such concert or  
22 production is presented by any society, association, guild, or  
23 workshop group, organized within this state, whose members or  
24 some of whose members regularly and actively participate in  
25 such concerts or productions for the purposes of providing a

1 creative outlet for the cultural and educational interests of  
2 such members, and of promoting such interests for the  
3 betterment of the community by presenting such productions to  
4 the general public for an admission charge. The employment of  
5 a paid director or conductor to assist in any such  
6 presentation described in this subdivision shall not be  
7 construed to prohibit the exemptions herein provided.

8 "(25) The gross proceeds of sales of herbicides for  
9 agricultural uses by whomsoever sold. The term herbicides, as  
10 used in this subdivision, means any substance or mixture of  
11 substances intended to prevent, destroy, repel, or retard the  
12 growth of weeds or plants. It shall include preemergence  
13 herbicides, postemergence herbicides, lay-by herbicides,  
14 pasture herbicides, defoliant herbicides, and desiccant  
15 herbicides.

16 "(26) The Alabama Chapter of the Cystic Fibrosis  
17 Research Foundation and the Jefferson Tuberculosis Sanatorium  
18 and any of their departments or agencies, heretofore or  
19 hereafter organized and existing in good faith in the State of  
20 Alabama for purposes other than for pecuniary gain and not for  
21 individual profit, shall be exempted from the computation of  
22 the tax on the gross proceeds of all sales levied, assessed,  
23 or payable.

24 "(27) The gross proceeds from the sale or sales of  
25 fuel for use or consumption aboard commercial fishing vessels

1 are hereby exempt from the computation of all sales taxes  
2 levied, assessed, or payable under the provisions of this  
3 division or levied under any county or municipal sales tax  
4 law.

5 The words commercial fishing vessels shall mean  
6 vessels whose masters and owners are regularly and exclusively  
7 engaged in fishing as their means of livelihood.

8 "(28) The gross proceeds of sales of sawdust, wood  
9 shavings, wood chips, and other like materials sold for use as  
10 chicken litter by poultry producers and poultry processors.

11 "(29) The gross proceeds of the sales of all  
12 antibiotics, hormones and hormone preparations, drugs,  
13 medicines, and other medications including serums and  
14 vaccines, vitamins, minerals, or other nutrients for use in  
15 the production and growing of fish, livestock, and poultry by  
16 whomsoever sold. Such exemption as herein granted shall be in  
17 addition to the exemption provided by law for feed for fish,  
18 livestock, and poultry, and in addition to the exemptions  
19 provided by law for the above-enumerated substances and  
20 products when mixed and used as ingredients in fish,  
21 livestock, and poultry feed.

22 "(30) The gross proceeds of the sale or sales of all  
23 medicines prescribed by physicians for persons who are 65  
24 years of age or older, and when said prescriptions are filled  
25 by licensed pharmacists, shall be exempted under this division

1 or under any county or municipal sales tax law. The exemption  
2 provided in this section shall not apply to any medicine  
3 purchased in any manner other than as is herein provided.

4 "For the purposes of this subdivision, proof of age  
5 may be accomplished by filing with the dispensing pharmacist  
6 any one or more of the following documents:

7 "a. The name and claim number as shown on a Medicare  
8 card issued by the United States Social Security  
9 Administration.

10 "b. A certificate executed by any adult person  
11 having knowledge of the fact that the person for whom the  
12 medicine was prescribed is not less than 65 years of age.

13 "c. An affidavit executed by any adult person having  
14 knowledge of the fact that the person for whom the medicine  
15 was prescribed is not less than 65 years of age.

16 "For the purposes of this subdivision, any person  
17 filing a false proof of age shall be guilty of a misdemeanor  
18 and upon conviction thereof shall be punished by a fine of  
19 \$100.

20 "(31) There shall be exempted from the tax levied by  
21 this division the gross receipts of sales of grass sod of all  
22 kinds and character when in the original state of production  
23 or condition of preparation for sale, when such sales are made  
24 by the producer or members of his or her family or for him by  
25 those employed by him to assist in the production thereof;

1 provided, that nothing herein shall be construed to exempt  
2 sales of sod by a person engaged in the business of selling  
3 plants, seedlings, nursery stock, or floral products.

4 "(32) The gross receipts of sales of the following  
5 items or materials which are necessary in the farm-to-market  
6 production of tomatoes when such items or materials are used  
7 by the producer or members of his or her family or for him by  
8 those employed by him to assist in the production thereof:  
9 Twine for tying tomatoes, tomato stakes, field boxes (wooden  
10 boxes used to take tomatoes from the fields to shed), and  
11 tomato boxes used in shipments to customers.

12 "(33) The gross proceeds from the sale of liquefied  
13 petroleum gas or natural gas sold to be used for agricultural  
14 purposes.

15 "(34) The gross receipts of sales from state  
16 nurseries of forest tree seedlings.

17 "(35) The gross receipts of sales of forest tree  
18 seed by the state.

19 "(36) The gross receipts of sales of Lespedeza  
20 bicolor and other species of perennial plant seed and  
21 seedlings sold for wildlife and game food production purposes  
22 by the state.

23 "(37) The gross receipts of any aircraft  
24 manufactured, sold, and delivered in this state if said

1 aircraft are not permanently domiciled in Alabama and are  
2 removed to another state.

3 "(38) The gross proceeds from the sale or sales of  
4 all diesel fuel used for off-highway agricultural purposes.

5 "(39) The gross proceeds from sales of admissions to  
6 any sporting event which:

7 "a. Takes place in the State of Alabama on or after  
8 January 1, 1984, regardless of when such sales occur; and

9 "b. Is hosted by a not-for-profit corporation  
10 organized and existing under the laws of the State of Alabama;  
11 and

12 "c. Determines a national championship of a national  
13 organization, including but not limited to the Professional  
14 Golfers Association of America, the Tournament Players  
15 Association, the United States Golf Association, the United  
16 States Tennis Association, and the National Collegiate  
17 Athletic Association; and

18 "d. Has not been held in the State of Alabama on  
19 more than one prior occasion, provided, however, that for such  
20 purpose the Professional Golfers Association Championship, the  
21 United States Open Golf Championship, the United States  
22 Amateur Golf Championship of the United States Golf  
23 Association, and the United States Open Tennis Championship  
24 shall each be treated as a separate event.

1           "(40) The gross receipts from the sale of any  
2 aircraft and replacement parts, components, systems, supplies,  
3 and sundries affixed or used on said aircraft and ground  
4 support equipment and vehicles used by or for the aircraft to  
5 or by a certificated or licensed air carrier with a hub  
6 operation within this state, for use in conducting intrastate,  
7 interstate, or foreign commerce for transporting people or  
8 property by air. For the purpose of this subdivision, the  
9 words "hub operation within this state" shall be construed to  
10 have all of the following criteria:

11           "a. There originates from the location 15 or more  
12 flight departures and five or more different first-stop  
13 destinations five days per week for six or more months during  
14 the calendar year; and

15           "b. Passengers and/or property are regularly  
16 exchanged at the location between flights of the same or a  
17 different certificated or licensed air carrier.

18           "(41) The gross receipts from the sale of hot or  
19 cold food and beverage products sold to or by a certificated  
20 or licensed air carrier with a hub operation within this  
21 state, for use in conducting intrastate, interstate, or  
22 foreign commerce for transporting people or property by air.  
23 For the purpose of this subdivision, the words "hub operation  
24 within this state" shall be construed to have all of the  
25 following criteria:



1            "a. There originates from the location 15 or more  
2 flight departures and five or more different first-stop  
3 destinations five days per week for six or more months during  
4 the calendar year; and

5            "b. Passengers and/or property are regularly  
6 exchanged at the location between flights of the same or a  
7 different certificated or licensed air carrier.

8            "(42) The gross receipts from the sale of any  
9 aviation jet fuel to a certificated or licensed air carrier  
10 purchased for use in scheduled all-cargo operations being  
11 conducted on international flights or in international  
12 commerce. For purposes of this subdivision, the following  
13 words or terms shall be defined and interpreted as follows:

14            "a. Air Carrier. Any person, firm, corporation, or  
15 entity undertaking by any means, directly or indirectly, to  
16 provide air transportation.

17            "b. All-Cargo Operations. Any flight conducted by an  
18 air carrier for compensation or hire other than a passenger  
19 carrying flight, except passengers as specified in 14 C.F.R.  
20 §121.583(a) or 14 C.F.R. §135.85, as amended.

21            "c. International Commerce. Any air carrier engaged  
22 in all-cargo operations transporting goods for compensation or  
23 hire on international flights.

24            "d. International Flights. Any air carrier  
25 conducting scheduled all-cargo operations between any point

1 within the 50 states of the United States and the District of  
2 Columbia and any point outside the 50 states of the United  
3 States and the District of Columbia, including any interim  
4 stops within the United States so long as the ultimate origin  
5 or destination of the aircraft is outside the United States  
6 and the District of Columbia.

7           "(43) The gross proceeds of the sale or sales of the  
8 following:

9           "a. Drill pipe, casing, tubing, and other pipe used  
10 for the exploration for or production of oil, gas, sulphur, or  
11 other minerals in offshore federal waters.

12           "b. Tangible personal property exclusively used for  
13 the exploration for or production of oil, gas, sulphur, or  
14 other minerals in offshore federal waters.

15           "c. Fuel and supplies for use or consumption aboard  
16 boats, ships, aircraft, and towing vessels when used  
17 exclusively in transporting persons or property between a  
18 point in Alabama and a point or points in offshore federal  
19 waters for the exploration for or production of oil, gas,  
20 sulphur, or other minerals in offshore federal waters.

21           "d. Drilling equipment that is used for the  
22 exploration for or production of oil, gas, sulphur, or other  
23 minerals, that is built for exclusive use outside this state  
24 and that is, on completion, removed forthwith from this state.

1           "The delivery of items exempted by this subdivision  
2 to the purchaser or lessee in this state does not disqualify  
3 the purchaser or lessee from the exemption if the property is  
4 removed from the state by any means, including by the use of  
5 the purchaser's or lessee's own facilities.

6           "The shipment to a place in this state of equipment  
7 exempted by this subdivision for further assembly or  
8 fabrication does not disqualify the purchaser or lessee from  
9 the exemption if on completion of the further assembly or  
10 fabrication the equipment is removed forthwith from this  
11 state. This subdivision applies to a sale that may occur when  
12 the equipment exempted is further assembled or fabricated if  
13 on completion the equipment is removed forthwith from this  
14 state.

15           "(44) The gross receipts derived from all bingo  
16 games and operations which are conducted in compliance with  
17 validly enacted legislation authorizing the conduct of such  
18 games and operations, and which comply with the distribution  
19 requirements of the applicable local laws; provided that the  
20 exemption from sales taxation granted by this subdivision  
21 shall apply only to gross receipts taxable under subdivision  
22 (2) of Section 40-23-2. It is further provided that this  
23 exemption shall not apply to any gross receipts from the sale  
24 of tangible personal property, such as concessions, novelties,  
25 food, beverages, etc. The exemption provided for in this

1 section shall be limited to those games and operations by  
2 organizations which have qualified for exemption under the  
3 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or  
4 (19), or which are defined in 26 U.S.C. § 501(d).

5 "(45) The gross receipts derived from the sale or  
6 sales of fruit or other agricultural products by the person or  
7 company, as defined in Section 40-23-1, that planted or  
8 cultivated and harvested the fruit or agricultural product,  
9 when the land is owned or leased by the seller.

10 "(46) The gross receipts derived from the sale or  
11 sales of all domestically mined or produced coal, coke, and  
12 coke by-products used in cogeneration plants.

13 "(47) The gross receipts from the sale or sales of  
14 metal, other than gold or silver, when such metal is purchased  
15 for the purpose of transferring such metal to an investment  
16 trust in exchange for shares or other units, each of which are  
17 both publicly traded and represent fractional undivided  
18 beneficial interests in the trust's net assets, including  
19 metal stored in warehouses located in this state, as well as  
20 the gross proceeds from the sale or other transfer of such  
21 metal to or from such investment trust in exchange for shares  
22 or other units that are publicly traded and represent  
23 fractional undivided beneficial interests in the trust's net  
24 assets but not to the extent that metal is transferred to or  
25 from the investment trust in exchange for consideration other

1 than such publicly traded shares or other units. For purposes  
2 of this subdivision, the term metals includes, but is not  
3 limited to, copper, aluminum, nickel, zinc, tin, lead, and  
4 other similar metals typically used in commercial and  
5 industrial applications.

6 "(48) For the period commencing on October 1, 2012,  
7 and ending May 30, 2022, unless extended by joint resolution,  
8 the gross receipts from the sale of parts, components, and  
9 systems that become a part of a fixed or rotary wing military  
10 aircraft or certified transport category aircraft that  
11 undergoes conversion, reconfiguration, or general maintenance  
12 so long as the address of the aircraft for FAA registration is  
13 not in the state; provided, however, that this exemption shall  
14 not apply to a local sales tax unless previously exempted by  
15 local law or approved by resolution of the local governing  
16 body.

17 "(49) The gross proceeds from the sale or sales  
18 within school buildings of lunches to pupils of kindergarten,  
19 grammar, and high schools, either public or private, that are  
20 not sold for profit.

21 "(50) The gross proceeds of services provided by  
22 photographers, including but not limited to sitting fees and  
23 consultation fees, even when provided as part of a transaction  
24 ultimately involving the sale of one or more photographs, so  
25 long as the exempt services are separately stated to the

1 customer on a bill of sale, invoice, or like memorialization  
2 of the transaction. For transactions occurring before October  
3 1, 2017, neither the Department of Revenue nor local tax  
4 officials may seek payment for sales tax not collected. With  
5 regard to such transactions in which sales tax was collected  
6 and remitted on services provided by photographers, neither  
7 the taxpayer nor the entity remitting sales tax shall have the  
8 right to seek refund of such tax.

9 "(51) a. For the period commencing on June 1, 2018,  
10 and ending five years thereafter, unless extended by an act of  
11 the Legislature, the gross proceeds of sales of bullion or  
12 money, as defined in Section 40-1-1(7).

13 "b. For purposes of this subdivision, the following  
14 words or terms shall be defined and interpreted as follows:

15 "1. Bullion. Gold, silver, platinum, palladium, or a  
16 combination of each precious metal, that has gone through a  
17 refining process and for which the item's value depends on its  
18 mass and purity, and not on its form, numismatic value, or  
19 other value. The term includes bullion in the form of bars,  
20 ingots, or coins that meet the requirements set forth above.  
21 Qualifying bullion may contain other metals or substances,  
22 provided that the other substances are minimal in value  
23 compared with the value of the gold, silver, platinum, or  
24 palladium and the other substances do not add value to the  
25 item. For purposes of this subparagraph, "gold, silver,

1 platinum, or palladium" does not include jewelry or works of  
2 art.

3 "2. Mass Purity. An item's mass is its weight in  
4 precious metal, and its purity is the amount of precious metal  
5 contained within the item.

6 "3. Numismatic Value. An external value above and  
7 beyond the base value of the underlying precious metal, due to  
8 the item's rarity, condition, age, or other external factor.

9 "c. In order for bullion to qualify for the sales  
10 tax exemption, gold, silver, platinum, and palladium items  
11 must meet all of the following requirements:

12 "1. Must be refined.

13 "2. Must contain at least ninety percent gold,  
14 silver, platinum, or palladium or some combination of these  
15 metals.

16 "3. The sales price of the item must fluctuate with  
17 and depend on the market price of the underlying precious  
18 metal, and not on the item's rarity, condition, age, or other  
19 external factor.

20 "(52) a. The gross proceeds of the initial retail  
21 sales of adaptive equipment that is permanently affixed to a  
22 motor vehicle.

23 "b. For the purposes of this subdivision, the  
24 following words or terms shall be defined and interpreted as  
25 follows:

1           "1. Adaptive Equipment. Equipment not generally used  
2 by persons with normal mobility that is appropriate for use in  
3 a motor vehicle and that is not normally provided by a motor  
4 vehicle manufacturer.

5           "2. Motor Vehicle. A vehicle as defined in Section  
6 40-12-240.

7           "3. Motor Vehicle Manufacturer. Every person engaged  
8 in the business of constructing or assembling vehicles or  
9 manufactured homes.

10           "c. In order to qualify for the exemption provided  
11 for herein, the adaptive equipment must be separately stated  
12 to the customer on a bill of sale, invoice, or like  
13 memorialization of the transaction.

14           "(53) a. For the period commencing on October 1,  
15 2022, and ending September 30, 2027, unless extended by an act  
16 of the Legislature, the gross receipts derived from the sale  
17 of producer value added agricultural products when the sale is  
18 made by the producer or by his or her immediate family, or for  
19 the producer by his or her employees.

20           "(b) Any violation of any provision of this section  
21 shall be punishable in a court of competent jurisdiction by a  
22 fine of not less than five hundred dollars (\$500) and no more  
23 than two thousand dollars (\$2,000) and imprisonment of not  
24 less than six months nor more than one year in the county  
25 jail."



1                   Section 3. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB274

Senate 30-MAR-22

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 06-APR-22

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Senate concurred in House amendment 06-APR-22

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By: Senator Livingston