

1 HB104
2 196336-3
3 By Representatives Brown (C) and Stringer (N & P)
4 RFD: Mobile County Legislation
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ENROLLED, An Act,

Relating to Mobile County; to provide for the local collection and enforcement of all county privilege, license, or excise taxes on the sale, distribution, storage, use, or other consumption of tobacco products in the county.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

(2) CIGARS, CHERROOTS, STOGIES, ETC. A roll for smoking that is of any size or shape and that is made wholly or in part of tobacco or any substitute therefor, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in part of tobacco.

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

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

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

8 (6) OTHER TOBACCO PRODUCTS. Cigars made of tobacco
9 or any substitute therefor, including cigarette-sized or
10 near-cigarette-sized cigars, smoking tobacco or hookah,
11 chewing tobacco, snuff, rolling papers, tubes, wraps, or cones
12 designed for tobacco consumption.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Section 5. In Mobile County, every person, firm,
25 corporation, club, or association that sells, stores, or

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

8 Section 6. Every wholesale dealer shall, at the time
9 of selling or delivering any cigarettes or other tobacco
10 products enumerated in this act, within Mobile County, make a
11 true duplicate invoice of the same, which shall show full and
12 complete details of the sale or delivery of the cigarettes or
13 other tobacco products, and shall retain the same, subject to
14 the use and inspection of the Mobile County Tobacco Tax
15 Collector or his or her duly authorized deputy, for a period
16 of three years. Wholesale and retail dealers shall also keep a
17 record of the purchase, sale, exchange, or receipt of all the
18 cigarettes or other tobacco products, and hold all books,
19 records, canceled checks, and all other memoranda pertaining
20 to the purchase, sales, exchange, or receipt for the period
21 mentioned herein, subject to the inspection of the Mobile
22 County Tobacco Tax Collector or his or her duly authorized
23 deputy, who shall have the power and authority to enter upon
24 the premises of any dealer and to examine such the business
25 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, which the state, county, city, and
23 local tax has not already been paid at wholesale, shall within
24 three days of receipt of the cigarettes or other tobacco
25 products, mail by registered mail a true duplicate invoice of

1 all the purchases or receipts to the Mobile County Tobacco Tax
2 Collector, the invoice carrying the name of the person or firm
3 from whom or through whom the purchases or shipments of the
4 cigarettes or other tobacco products so received, showing
5 kinds and quantities. Any person who purchases or receives in
6 any manner whatsoever, any of the cigarettes or other tobacco
7 products enumerated in this act which do not have affixed the
8 stamps required by this act, which the state, county, city,
9 and local tax has not already been paid at wholesale, within
10 three days after receipt of the cigarettes or other tobacco
11 products, shall report the receipt and purchase of the
12 cigarettes or other tobacco products to the Mobile County
13 Tobacco Tax Collector, giving the date of purchase or receipt,
14 the name and address of the person or firm from whom it was
15 purchased or received, and a list describing the cigarettes or
16 other tobacco products purchased or received. The report must
17 be made by registered mail or in person.

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

1 Section 9. Any retail dealer or semijobber of
2 tobacco products enumerated and defined in this act purchasing
3 or receiving the commodities from without the state, whether
4 the same shall have been ordered or purchased through a
5 wholesaler or jobber in this state, or by drop shipment or
6 otherwise, which the state, county, city, and local tax has
7 not already been paid at wholesale, shall within three days of
8 receipt of such tobacco products, provide electronically, a
9 true duplicate invoice of all such purchases or receipts to
10 the Mobile County Tobacco Tax Collector, the invoice carrying
11 the name of the person or firm from whom or through whom such
12 purchases or shipments of the tobacco products so received,
13 showing kinds and quantities. Any retail dealer or semijobber
14 failing or refusing to furnish duplicate invoices, in both the
15 manner and time allowed, may be subject to a county imposed
16 penalty of not less than one thousand dollars (\$1,000) nor
17 more than five thousand dollars (\$5,000), to be multiplied by
18 the sum of the current violation plus prior violations of this
19 section. Tobacco products imported by retail dealers and
20 semijobbers in which a true and duplicate invoice has not been
21 received by the county are considered contraband and subject
22 to confiscation as provided for by law.

23 Section 10. Any person, firm, corporation, club, or
24 association failing to affix required stamps, or account and
25 collect the taxes enumerated in Section 2, shall on a first

1 offense pay a civil penalty of not less than twenty-five
 2 dollars (\$25) per item nor more than five hundred dollars
 3 (\$500) per item. Penalty payments shall be made to the Mobile
 4 County Tobacco Tax Collector within 30 days of notice of the
 5 penalty and paid to the General Fund of the County. For a
 6 second offense under this act, there shall be a civil penalty
 7 of not less than one hundred dollars (\$100) per item, nor more
 8 than five hundred dollars (\$500) per item. For a third
 9 offense, the Mobile County Commission shall recommend to the
 10 State Department of Revenue that the State Business License be
 11 revoked for a period of one year.

12 Section 11. The Mobile County Tobacco Tax Collector
 13 shall have the duties relative to the preparation and sale of
 14 stamps to evidence the payment of the tax on products suitable
 15 for affixing the stamp. In the event tobacco stamps are not
 16 available, or not suitable for affixing to certain tobacco
 17 products, the Mobile County Commission shall require a monthly
 18 report in lieu of stamps to report the amount of tax due. The
 19 monthly report shall be in a form approved and adopted by the
 20 Mobile County Commission.

21 Section 12. Any product taxable by law found not
 22 having affixed to the package the stamps, or in the case of
 23 products not requiring a stamp to be affixed where purchase
 24 invoices do not itemize the applicable tobacco taxes, are
 25 declared to be contraband goods and may be seized by the

1 Mobile County Tobacco Tax Collector without a warrant and the
2 goods delivered to Mobile County for destruction.

3 Section 13. The Mobile County Commission may adopt
4 rules to effectuate the purposes of this act and conform to
5 the provisions of Chapter 25 of Title 40, Code of Alabama
6 1975. On the effective date of this act, the Mobile County
7 Commission shall publish a notice to all tobacco wholesalers
8 and retailers consistent with Act 2014-262, effective October
9 1, 2014, and the State Department of Revenue memo to all
10 tobacco wholesalers and retailers of June 11, 2014.

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

17 Section 15. All other provisions of prior local laws
18 not inconsistent with this act are confirmed. All laws or
19 parts of laws which conflict with this act are repealed.

20 Section 16. This act shall become effective October
21 1, 2019, upon its passage and approval by the Governor, or
22 upon its otherwise becoming law.

