HB104

196336-3

By Representatives Brown (C) and Stringer (N & P)

RFD: Mobile County Legislation

First Read: 05-MAR-19
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, CHEROOTS, 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.
(4) FILTERED CIGARS. Filtered cigars that have a cellulose acetate or similar integrated filter, made of tobacco, or any substitute therefor, and weighing more than three pounds per 1,000.

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

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

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

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

(9) STAMPS. The stamp or stamps by the use of which tax is levied under this act.
(10) SMOKING TOBACCO. All smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette.

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

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

(a) Twenty cents ($0.20) for each package of cigarettes made of tobacco or any substitute therefor.

(b) Twenty-one cents ($0.21) for each cigar stick of any description made of tobacco or any substitute therefor, with the exception of cigarette-sized or near-cigarette-sized cigars which shall be taxed at the same rate as cigarettes.
(c) Twenty-three cents ($0.23) for each sack, can, package, or other container of smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco which are prepared in such a manner as to be suitable for smoking in a pipe or cigarette.

(d) Twenty-three cents ($0.23) for each sack, plug, package, or other container of chewing tobacco, which tobacco is prepared in such manner as to be suitable for chewing only and not suitable for smoking as described in subsection (c) of this section.

(e) Twenty-three cents ($0.23) for each can, bottle, glass, tumbler, package, or other container of snuff made of tobacco or any substitute therefor.

(f) Thirty-four cents ($0.34) for each package of tobacco paper, both gummed and ungummed.

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

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

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

Section 7. Every wholesale dealer shall furnish to the Mobile County Tobacco Tax Collector a monthly report, between the 1st and 20th of each month, for the preceding month, of the sale or delivery of all cigarettes or other tobacco products made in Mobile County, and of all orders for cigarettes or other tobacco products as enumerated herein purchased through the wholesale dealer from without Mobile County on a drop shipment, and consigned direct to the person, firm, corporation, or association of person ordering such cigarettes or other tobacco products from without this county through the wholesaler dealer. Any retail dealer or semijobber of cigarettes or other tobacco products enumerated herein, purchasing or receiving such commodities from without the county, whether the same shall have been ordered or purchased through a wholesaler or jobber in this county, or by drop shipment or otherwise, which the state, county, city, and local tax has not already been paid at wholesale, shall within three days of receipt of the cigarettes or other tobacco products, mail by registered mail a true duplicate invoice of
all the purchases or receipts to the Mobile County Tobacco Tax Collector, the invoice carrying the name of the person or firm from whom or through whom the purchases or shipments of the cigarettes or other tobacco products so received, showing kinds and quantities. Any person who purchases or receives in any manner whatsoever, any of the cigarettes or other tobacco products enumerated in this act which do not have affixed the stamps required by this act, which the state, county, city, and local tax has not already been paid at wholesale, within three days after receipt of the cigarettes or other tobacco products, shall report the receipt and purchase of the cigarettes or other tobacco products to the Mobile County Tobacco Tax Collector, giving the date of purchase or receipt, the name and address of the person or firm from whom it was purchased or received, and a list describing the cigarettes or other tobacco products purchased or received. The report must be made by registered mail or in person.

Section 8. It shall be unlawful for any dealer, storer, or distributor engaged in or continuing in Mobile County in the business for which the tax is levied to fail or refuse to add to the sales price and collect from the purchaser the amount due on the tax authorized in this act or to refund or offer to refund all or any part of the amount collected or absorb or advertise directly or indirectly the absorption of the tax or any portion thereof.
Section 9. Any retail dealer or semijobber of tobacco products enumerated and defined in this act purchasing or receiving the commodities from without the state, whether the same shall have been ordered or purchased through a wholesaler or jobber in this state, or by drop shipment or otherwise, which the state, county, city, and local tax has not already been paid at wholesale, shall within three days of receipt of such tobacco products, provide electronically, a true duplicate invoice of all such purchases or receipts to the Mobile County Tobacco Tax Collector, the invoice carrying the name of the person or firm from whom or through whom such purchases or shipments of the tobacco products so received, showing kinds and quantities. Any retail dealer or semijobber failing or refusing to furnish duplicate invoices, in both the manner and time allowed, may be subject to a county imposed penalty of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), to be multiplied by the sum of the current violation plus prior violations of this section. Tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the county are considered contraband and subject to confiscation as provided for by law.

Section 10. Any person, firm, corporation, club, or association failing to affix required stamps, or account and collect the taxes enumerated in Section 2, shall on a first
offense pay a civil penalty of not less than twenty-five dollars ($25) per item nor more than five hundred dollars ($500) per item. Penalty payments shall be made to the Mobile County Tobacco Tax Collector within 30 days of notice of the penalty and paid to the General Fund of the County. For a second offense under this act, there shall be a civil penalty of not less than one hundred dollars ($100) per item, nor more than five hundred dollars ($500) per item. For a third offense, the Mobile County Commission shall recommend to the State Department of Revenue that the State Business License be revoked for a period of one year.

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

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

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

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

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

Section 16. This act shall become effective October
1, 2019, upon its passage and approval by the Governor, or
upon its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in
and was passed by the House 18-APR-19, as amended.

Jeff Woodard
Clerk

Senate 02-MAY-19 Passed