ACT #2014-242

1 HB404

2 157557-4

3 By Representative Jones

4 RFD: Commerce and Small Business

5 First Read: 04-FEB-14

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2 ENROLLED, An Act,

3 To amend Sections 40-25-1, 40-25-2, 40-25-4,
4 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20, and 40-2A-10,
5 Code of Alabama 1975; to add Section 40-25-16.1 to Title 40,
6 Chapter 25, Code of Alabama 1975; to change certain
7 definitions; to separate little cigars from filtered
8 cigarette-sized cigars and eliminate cigar categories for
9 which tax is no longer applicable; to remove archaic language
10 requiring distributors to cancel a stamp when it has been
11 affixed to tobacco products; to require the state tobacco tax
12 amount to be separately stated on the invoice; to require
13 retailers to maintain 90 days of invoices; to require computer
14 or machine generated invoices; to add penalties; and to amend
15 confiscation procedures and additional reporting requirements.
16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
17 Section 1. Sections 40-25-1, 40-25-2, 40-25-4,
18 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20 and 40-2A-10,
19 Code of Alabama 1975, are amended to read as follows:
20 "§40-25-1.
21 "For the purposes of this article, the following
22 terms shall have the respective meanings ascribed by this
23 section:
24 "(1) WHOLESALE DEALER AND JOBBER. Persons, firms, or
25 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.

"(2) 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.

"(3) 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.

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

"(5) 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."

"§40-25-2.

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

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

"(2) FILTERED CIGARS. Upon ~~cigarette-sized filtered cigars~~ filtered cigars that have a cellulose acetate or similar integrated filter, made of tobacco, or any substitute therefor ~~and packaged in any quantity, the tax shall be $0.015 for each filtered cigar~~, and weighing more than three pounds per 1,000, $0.015 for each filtered cigar

1 ~~"(2) (3) CHEROOTS, STOGIES, CIGARS, ETC. Upon cigars~~
2 ~~of all descriptions made of tobacco, or any substitute~~
3 ~~therefor, retailing for three and one-third cents each or~~
4 ~~less, $3 per 1,000 the tax shall be $40.50 per thousand cigars~~
5 ~~or $0.0405 each.~~
6 ~~"(2) CHEROOTS, STOGIES, CIGARS, ETC. Upon cigars of~~
7 ~~all descriptions made of tobacco, or any substitute therefor,~~
8 ~~retailing for three and one-third cents each or less, $3 per~~
9 ~~1,000.~~
10 "(3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other
11 cigars of any descriptions made of tobacco, or any substitute
12 therefor, $40.50 per thousand cigars, or $0.0405 each.
13 ~~"(3) CIGARS. Upon cigars of all descriptions made of~~
14 ~~tobacco, or any substitute therefor, retailing for more than~~
15 ~~three and one-third cents each and not more than $.05 each, $6~~
16 ~~per 1,000.~~
17 ~~"(4) CIGARS. Upon cigars of all descriptions made of~~
18 ~~tobacco, or any substitute therefor, retailing for more than~~
19 ~~$.05 each and not exceeding $.08 each, $9 per 1,000.~~
20 ~~"(5) CIGARS. Upon cigars of all descriptions made of~~
21 ~~tobacco, or any substitute therefor, retailing for more than~~
22 ~~$.08 each and not exceeding $.10 each, $15 per 1,000.~~
23 ~~"(6) CIGARS. Upon cigars of all descriptions made of~~
24 ~~tobacco, or any substitute therefor, retailing for more than~~
25 ~~$.10 each and not exceeding $.20 each, $30 per 1,000.~~

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

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

"~~(9)~~ (5) SMOKING TOBACCO. Upon 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, upon each package: Weighing not more than one and one-eighth ounces, tax $.04; over one and one-eighth ounces, not exceeding two ounces, tax $.10; over two ounces, not exceeding three ounces, tax $.16; over three ounces, not exceeding four ounces, tax $.21; $.06 additional tax for each ounce or fractional part thereof over four ounces.

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

"~~(11)~~ (7) SNUFF. Upon each can or package of snuff weighing not more than five-eighths ounces, one cent tax; over five-eighths ounces and not exceeding one and five-eighths ounces, $.02 tax; over one and five-eighths ounces and not

exceeding two and one-half ounces, $.04 tax; over two and one-half ounces and not exceeding five ounces (cans, packages, gullets), $.06 tax; over three ounces and not exceeding five ounces (glasses, tumblers, bottles), seven cents tax; over five ounces and not exceeding six ounces, $.08 tax; weighing over six ounces, an additional $.12 for each ounce or fractional part thereof.

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

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

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

"~~(e)~~ (c) When any articles or commodities subject to tax in this article are given as prizes on punch boards, shooting galleries, premiums, etc., the tax shall be based on

the ~~ordinary retail selling price~~ tax rates in subsection (a) of such articles.

"~~(f)~~ (d) The tax herein levied shall be paid to the state through the use of stamps as herein provided. However, every wholesaler, distributor, jobber, semijobber or retail dealer shall add the amount of the tax levied herein to the price of the tobacco or tobacco products sold, it being the purpose and intent of this provision that the tax levied is in fact a levy on the ultimate consumer or user with the wholesaler, distributor, jobber, semijobber or retail dealer acting merely as an agent of the state for the collection and payment of the tax to the state. Therefore, notwithstanding any exemptions from taxes which any such seller may now or hereafter enjoy under the Constitution or laws of this or any other state, or of the United States, he shall collect the tax imposed hereunder from the purchaser or consumer, and the amount of the tax shall constitute a debt from the purchaser or consumer to the seller until paid. It shall be unlawful for any person, firm, corporation, association, or copartnership to fail or refuse to add to the sales price and collect from the purchaser the amount of the tax to be added to the sales price and collected from the purchaser hereunder. Stamps in denominations to the amount of the tax or in denominations specified pursuant to subsection ~~(g)~~ (e) of this section shall be affixed to the box or other container from or in which

tobacco products taxed by this section are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water, ~~or~~ steam, or heat; and in case of cigars, cheroots, chewing tobacco and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, smoking tobacco, snuff and like products sold at retail in packages, the required amount of stamps to cover the tax shall be affixed to each individual package or container. All taxable tobaccos herein enumerated, when offered for sale, either at wholesale or retail, without having stamps affixed in the manner set out by this article, or without payment of the tax by return by the wholesaler, jobber, semijobber, or registered retailer, shall be subject to confiscation, in the manner provided for contraband goods as set out in this article.

"~~(g)~~(e) The Commissioner of Revenue shall prepare and issue stamps in denominations for the amount of the tax imposed by this article provided that if the commissioner determines that it is not economical for the state to have a stamp prepared and issued for one or more particular types of packages of tobacco products, then he may by regulation

prescribe the use of a stamp in a denomination other than for the amount of the tax imposed with the difference between the amount of tax actually imposed and the amount of tax denominated by the stamp paid with the use of a monthly report; or he may require a monthly report without use of a stamp to report the amount of taxes due.

"~~(h)~~(f) The increases levied by this section shall be exclusive and shall be in lieu of any other or additional local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes and/or other tobacco products. Notwithstanding the foregoing, an act of the Legislature or an ordinance or resolution by a taxing authority passed or enacted on or before May 18, 2004, imposing a local tax and/or license fee shall remain operative, but no additional local tax and/or license fee may thereafter be levied on the sale of cigarettes and/or other tobacco products.

"~~(i)~~(g) Local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes shall be paid to the local government through the use of stamps affixed to the product as provided herein for the state tax. Provided, however, this requirement shall not be interpreted to require the Department of Revenue to prepare all stamps or to collect all local taxes. Local governments may contract with another

entity to collect their local cigarette tax but all local taxes must be collected as provided herein.

"§40-25-4.

"The license taxes imposed by this article shall be paid by affixing stamps in the manner and at the time herein set forth. In the case of cigars, stogies, cheroots, chewing tobacco, and like products, the stamps shall be affixed to the box or container in which or from which normally sold at retail. In the case of cigarettes, smoking tobacco, and snuff, the stamps shall be affixed to each individual package. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this state, except wholesalers who are issued a permit by the Department of Revenue, shall immediately after receipt of any unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, or snuff, unless sooner offered for sale, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein~~, and to cause same to be cancelled by writing or stamping across the face of each stamp the registered number of such wholesaler or retailer, which shall be furnished by the Department of Revenue~~. The stamping of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and snuff shall actually begin within one hour after receipt of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and

snuff in the premises of the wholesale or retail dealer, except wholesalers who are issued a permit by the Department of Revenue, and the stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and snuff have been stamped ~~and the stamps cancelled as provided by law~~. Wholesalers who have been issued a permit by the department shall affix the required stamps prior to any sale. Every wholesale dealer shall at the time of shipping or delivering any tobacco products as enumerated herein make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article, shall state the tobacco tax separately from the price of the tobacco products, and shall retain the same subject to the use and inspection of the Department of Revenue, or its duly authorized agents for a period of three years. Wholesaler invoices must be computer or machine generated and the seller's or supplier's name must be on the invoice. Handwritten invoices may not be considered legitimate documentations to substantiate proof of sale. Wholesale and retail dealers shall also keep a record of purchases of all tobacco products enumerated and defined in this article and hold all books, records, and memoranda pertaining to the purchase and sale of those tobacco products open to the

1 inspection of the Department of Revenue or its duly authorized
2 agents at any and all times. Every wholesale dealer shall
3 furnish to the Department of Revenue a monthly report, between
4 the first and twentieth of each month for the preceding month,
5 of all orders for tobacco products purchased through the
6 wholesale dealer from without this state on a drop shipment
7 and consigned direct to the person, firm, corporation, or
8 association of persons ordering the tobacco products from
9 without this state through the wholesale dealer. If, upon
10 examination of invoices of any tobacco product sold by a
11 wholesaler or purchased or received, or both, by a retail
12 dealer, he or she is unable to furnish evidence to the
13 Department of Revenue of sufficient stamp purchases to cover
14 the unstamped tobaccos purchased, the prima facie presumption
15 shall arise that the tobacco products were sold without the
16 proper stamps affixed thereto. Any wholesaler or retailer who
17 fails or refuses to comply with any or all of the above
18 provisions shall be deemed a violator of this section and,
19 upon conviction, punished by a fine of not less than $500 nor
20 more than $1,000, or imprisonment in the county jail for a
21 period of six months, either or both, at the discretion of the
22 court.
23 "§40-25-7.
24 "Any retail dealer or semijobber of tobacco products
25 enumerated and defined in this article purchasing, or

receiving such 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, shall within 12 hours of receipt of such tobacco products, ~~mail by certified or registered mail~~ provide electronically, a true duplicate invoice of all such purchases or receipts to the Department of Revenue ~~at Montgomery, Alabama~~, said 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, ~~shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 for each offense, or imprisonment in the county jail for a period not exceeding 60 days~~ may be subject to a department 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 subsection. Tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the department are considered contraband and subject to confiscation as provided for in this chapter.

"§40-25-8.

"Any cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any point within the State of Alabama, which the cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having affixed to the package the stamps as provided in this article, <u>or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes,</u> are declared to be contraband goods and may be seized by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for ~~sale at public auction to the highest bidder after due advertisement. The Department of Revenue before delivering any of the goods so seized shall require the purchaser to affix the proper amount of stamps to the individual package as above defined. The proceeds of sale for any goods sold hereunder shall be turned over to the Treasurer by the Department of Revenue as other funds collected by the department. The cost of confiscation and sale shall be paid out of the proceeds derived from the sale before making remittance to the Treasurer~~ <u>destruction</u>. Any of the goods, wares, or merchandise when offered for sale,

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

the tobacco products being transported. The cost of confiscation and sale shall be paid out of the proceeds derived from the sale before making remittance to the Treasurer. Should any unstamped tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale.

"§40-25-9.

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

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

~~the sale of the confiscated goods or the compromise which may be effected~~.

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

"(3) Any person claiming the said goods, wares or merchandise or other property so seized as contraband within the time specified in the notice may file with the Department of Revenue a claim in writing, stating his interest in the articles seized and may execute a bond to the Department of Revenue in a penal sum equal to double the value of said goods so seized, but in no case shall said bond be less than the sum of $200, with sureties to be approved by the clerk of the circuit court in the county in which the goods are seized, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay to the Department of Revenue the full value of the goods so seized and all costs and expenses of the proceedings to obtain such condemnation,

including a reasonable attorney's fee. And upon the delivery of such bond to the Department of Revenue, it shall transmit the same with the duplicate list or description of the goods seized to the district attorney of the circuit in which such seizure was made, and the said district attorney shall file a complaint in the circuit court of the county where the seizure was made to secure the forfeiture of said goods, wares, merchandise or other property. Upon the filing of the bond aforesaid the said goods shall be delivered to the claimant pending the outcome of said case; provided, that said claimant must purchase the proper stamps to be affixed to each article of tobacco before the goods are delivered to the claimant by the Department of Revenue ~~goods must have the proper stamps affixed to each such article of tobacco before turning same over to claimant, the stamps so affixed to be paid for by claimant when goods properly stamped are delivered by the Department of Revenue~~.

"(4) If no claim is interposed and no bond given within the time above specified, such goods, wares, merchandise or other property shall be forfeited without further proceedings and the same shall be destroyed, if tobacco goods, or sold ~~as herein provided~~ at auction, if a vehicle. The proceeds of sale when received by the Department of Revenue shall be turned in to the Treasury as other revenues are required by law to be turned in. ~~In seizure in~~

~~quantities of less value than $50, the same may be advertised with other quantities at Montgomery, Alabama, by the Department of Revenue and disposed of as hereinabove provided.~~ The proceedings against goods, merchandise or other property pursuant to the provisions of this article shall be considered as proceedings in rem unless otherwise provided. Should the Department of Revenue have to resort to the courts for collection of the tax due and assessed, no advertisement shall be made and the confiscated tobaccos may be held as evidence pending the results of court action.

"§40-25-13.

"It shall be the duty of every person, firm, corporation, club, or association of persons, receiving, storing, selling, or handling tobacco products enumerated herein in any manner whatsoever to keep and preserve all invoices, books, papers, cancelled checks, or other memoranda touching the purchase, sale, exchange, or receipt of any and all tobacco products enumerated herein. All such invoices, books, papers, cancelled checks, or other memoranda shall be subject to audit and inspection by any duly authorized representative of the Department of Revenue at any and all times. <u>Each operator of a retail outlet shall receive, examine, and retain the purchase invoice from the source of the tobacco products for every purchase of tobacco products for a period of 90 days at the retail location. At the end of</u>

the 90 days, the purchase records shall be maintained with the required books and records for a period of three years from the date of purchase. Invoices received by the retailer dealer must be computer or machine generated and must show the seller's or supplier's name. Invoices cannot be handwritten. Failure to acquire appropriate invoices, substantiate tax payment or retain invoices in the above manner may result in confiscation of the tobacco products in accordance with the procedures of this chapter. Any person, firm, corporation, club, or association of persons who fails or refuses to keep and preserve the records as herein required, or who upon request by a duly authorized agent of the Department of Revenue fails or refuses to allow an audit or inspection of records as hereinabove provided ~~shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than $50 nor more than $200, or imprisonment in the county jail for a period not to exceed 90 days for each offense~~ may result in a department imposed penalty of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000). This penalty is multiplied by the number of violations of this subsection.

"§40-25-20.

"Any person, firm, corporation, club, or association of persons, who shall reuse or refill with any tobacco products enumerated herein any box, package or container from

which tobacco products theretofore tax-paid have been removed, ~~shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $500 or imprisoned not to exceed six months, either or both, at the discretion of the court~~ or who otherwise violates any provision of this chapter, may be subject to a department imposed penalty of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000). This penalty is multiplied by the number of violations of this subsection.

"§40-2A-10.

"(a) Except as otherwise provided in this section, it shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the return of any taxpayer or any part of the return, or any information secured in arriving at the amount of tax or value reported, for any purpose other than the proper administration of any matter administered by the department, a county, or a municipality, or upon order of any court, or as otherwise allowed in this section. Statistical information pertaining to taxes may be disclosed at the discretion of the commissioner or his or her delegate to the legislative or executive branch of the state. Upon request, the commissioner or his or her delegate may make written disclosure as to the status of compliance of entities subject to the requirements contained in Chapter 14, prior to its

1 repeal, and Chapter 14A, as applicable. A good standing
2 certificate shall be issued to a requesting person with
3 respect to a business entity if the entity has filed all state
4 tax returns required under Chapter 14, prior to its repeal,
5 and Chapter 14A, as applicable, and paid the taxes shown as
6 payable in accordance with those returns. Any person found
7 guilty of violating this section shall, for each act of
8 disclosure, have committed a Class A misdemeanor.
9 Additionally, to the extent provided in 26 U.S.C. § 7213A, it
10 shall be unlawful for any state employee willfully to inspect,
11 except as authorized in 26 U.S.C. § 6103, any federal tax
12 return or federal tax return information acquired by the
13 employee or another person under a provision of 26 U.S.C. §
14 6103 referred to in 26 U.S.C. § 7213(a)(2).
15 "(b) This section shall not apply to returns filed
16 and information secured under laws of the state (1) governing
17 the registration and titling of motor vehicles, (2) levying or
18 imposing excise taxes or inspection fees upon the sale of,
19 use, and other disposition of gasoline and other petroleum
20 products, (3) governing the licensing of motor vehicle
21 dealers, reconditioners, rebuilders, wholesalers, and
22 automotive dismantlers and parts recyclers, (4) governing the
23 privilege licenses as provided in Chapter 12, other than
24 Article 4, of this title or (5) governing the issuance or
25 affixing of tobacco stamps <u>and governing the online web site</u>

1 listing of permitted and registered tobacco distributors
2 required under Chapter 25.
3 "(c) This section shall not apply to the disclosure
4 of the amount of local privilege license or franchise fees
5 paid to counties and municipalities by any taxpayer possessing
6 a franchise (whether or not exclusive) granted by the
7 respective county or municipality. However, any information
8 other than the amount of license or franchise fees paid,
9 including returns or parts thereof or documents filed with or
10 secured by any municipality or county or their authorized
11 agent and relating to local privilege licenses and franchises
12 shall remain confidential information subject to subsection
13 (a).
14 "(d) Except as otherwise provided in subsection (m)
15 of Section 40-2A-9, the orders of the administrative law judge
16 and all evidence, pleadings, and any other information offered
17 or submitted in any appeal before the Administrative Law
18 Division are not subject to this section.
19 "(e) The commissioner shall promulgate reasonable
20 regulations permitting and governing the exchange of tax
21 returns, information, records, and other documents secured by
22 the department, with tax officers of other agencies of the
23 state, municipal, and county government agencies in the state,
24 federal government agencies, any association of state
25 government tax agencies, any state government tax agencies of

1 other states, and any foreign government tax agencies.
2 However, (1) any tax returns, information, records, or other
3 documents remain subject to the confidentiality provisions set
4 forth in subsection (a); (2) the department may charge a
5 reasonable fee for providing information or documents for the
6 benefit of self-administered counties and municipalities; (3)
7 self-administered counties and municipalities may charge a
8 reasonable fee for providing information or documents for the
9 benefit of the department; and (4) any exchange shall be for
10 one or more of the following purposes:
11 "a. Collecting taxes due.
12 "b. Ascertaining the amount of taxes due from any
13 person.
14 "c. Determining whether a person is liable for, or
15 whether there is probable cause for believing a person might
16 be liable for, the payment of any tax to a federal, state,
17 county, municipal, or foreign government agency.
18 "(f)(1) Nothing herein shall prohibit the use of tax
19 returns or tax information by the department or county tax
20 collecting officials in the proper administration of any
21 matter administered by the department or county tax collecting
22 officials. The department, a municipality, or county tax
23 official may also divulge to a purchaser, prospective
24 purchaser, as defined pursuant to the regulations of the
25 department, or successor of a business or stock of goods the

1 outstanding sales, use, or rental tax liability of the seller
2 for which the purchaser, prospective purchaser, as defined
3 pursuant to the regulations of the department, or successor
4 may be liable pursuant to Section 40-23-25, 40-23-82, or
5 40-12-224. This section shall not preclude the inspection of
6 returns by federal or foreign state agents pursuant to Section
7 40-18-53.
8 "(2) Upon a request by the State Treasurer, the
9 commissioner may provide the State Treasurer with the names
10 and addresses of those persons entitled to property acquired
11 by the state under Article 2 of Chapter 12 of Title 35, the
12 Uniform Disposition of Unclaimed Property Act. The information
13 shall be used by the State Treasurer solely for the purpose of
14 administering the Uniform Disposition of Unclaimed Property
15 Act.
16 "(g) Nothing herein shall prohibit the exchange of
17 information between and among county or municipal governments,
18 provided that any exchange shall be subject to the same
19 restrictions and criminal penalties imposed on the department
20 and its personnel as described in this section.
21 "(h) In no event shall any damages, attorney fees,
22 or court costs be assessed against the state, a county, or a
23 municipal government under this section, nor shall any
24 damages, attorney fees, or court costs be assessed against

1 elected officials, officers, or employees of a state, county,
2 or municipal government."
3 Section 2. Section 40-25-16.1 is added to Chapter
4 25, Title 40 of the Code of Alabama 1975, as follows:
5 §40-25-16.1. Additional reporting requirements and
6 web site listing.
7 Each wholesaler, jobber, semijobber, registered
8 retailer, importer or any other person selling, receiving, or
9 distributing tobacco products in this state for resale shall
10 file a report of its activity to the Department of Revenue
11 between the first and twentieth of each month. The information
12 shall include, but not be limited to, the customer's name,
13 address, invoice number, invoice date, a description of the
14 tobacco products, the itemized tax, and any other information
15 required by the department.
16 No later than 90 days after the passage of the act
17 adding this section, the commissioner shall establish a web
18 site for listing each wholesaler, jobber, semijobber,
19 retailer, importer, or distributor of tobacco products that
20 have qualified or registered with the Department of Revenue.
21 Purchases of tobacco products made from an entity other than
22 the above permitted or registered entities appearing on the
23 department web site listing shall be subject to confiscation,
24 as provided for in this chapter.

1 Section 3. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.
5 Section 4. All laws or parts of laws which conflict
6 with this act are repealed.
7 Section 5. This act shall become effective on ~~the~~
8 ~~first day of the third month~~ October 1, 2014, following its
9 passage and approval by the Governor, or its otherwise
10 becoming law.

1
2
3 _____
4 Speaker of the House of Representatives

5 Kay Ivey
6 President and Presiding Officer of the Senate

7 House of Representatives
8 I hereby certify that the within Act originated in
9 and was passed by the House 20-FEB-14, as amended.
10
11 Jeff Woodard
12 Clerk
13

14

15 Senate	19-MAR-14	Amended and Passed
16 House	20-MAR-14	Concurred in Senate Amendment

17

APPROVED April 2, 2014

TIME 9:00 a.m.

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2014-262
Bill Num...: H-404

Recv'd 04/02/14 10:35amSLF

Jones

CO-SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 404

YEAS 98 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

_____

_____

SENATE ACTION

DATE: 2-20

RD 1 RFD Health

This Bill was referred to the Star
Committee of the Senate on
Health
and was acted upon by such Commit
session and is by order of the Comm
returned therefrom with a favorable r
w/amend(s) 1 w/sub ____ by a vo
yeas 5 nays 0 abstain ___
this 26th day of February 20
_____, Chairpe

DATE: 2-26

RF FAV AMD (1)

DATE:

RE-REFERRED ☐ RE-COMMITTE
Committee _____

I hereby certify that the Resolution
required in Section C of Act No. 81-
was adopted and is attached to the
HB 404

YEAS 27 NAYS 0 A

PATRICK HARF
Secret

FURTHER SENATE ACTION (OVER)