

1 HB404
2 157557-2
3 By Representative Jones
4 RFD: Commerce and Small Business
5 First Read: 04-FEB-14

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8 SYNOPSIS: This bill would amend Sections 40-25-1,
9 40-25-2, 40-25-4, 40-25-7, 40-25-8, 40-25-9,
10 40-25-13, 40-25-20, and 40-2A-10, Code of Alabama
11 1975. This bill would also add Section 40-25-16.1
12 to Title 40, Chapter 25, Code of Alabama 1975.

13 This bill would further define terms
14 relating to wholesale dealers and jobbers, separate
15 little cigars from filtered cigarette-sized cigars
16 and eliminate cigar categories for which tax is no
17 longer applicable, remove archaic language
18 requiring distributors to cancel a stamp when it
19 has been affixed to tobacco products, require the
20 state tobacco tax amount to be separately stated on
21 the invoice, require retailers to maintain 90 days
22 of invoices, and require computer and machine
23 generated invoices. Departmental penalties would
24 apply for failure to maintain records, amend the
25 confiscation procedures, provide for confiscation
26 of tobacco if invoices are not maintained or if
27 products are stored by non-permitted or

1 non-registered entities, provide for departmental
2 penalties for reusing or refilling tobacco
3 containers or otherwise violating any provision of
4 Chapter 25, and provide for additional reporting
5 and web site listing of permitted and registered
6 distributors.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 To amend Sections 40-25-1, 40-25-2, 40-25-4,
13 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20, and 40-2A-10,
14 Code of Alabama 1975; to add Section 40-25-16.1 to Title 40,
15 Chapter 25, Code of Alabama 1975; to change certain
16 definitions; to separate little cigars from filtered
17 cigarette-sized cigars and eliminate cigar categories for
18 which tax is no longer applicable; to remove archaic language
19 requiring distributors to cancel a stamp when it has been
20 affixed to tobacco products; to require the state tobacco tax
21 amount to be separately stated on the invoice; to require
22 retailers to maintain 90 days of invoices; to require computer
23 or machine generated invoices; to add penalties; to require
24 permits; and to amend confiscation procedures and additional
25 reporting requirements.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 40-25-1, 40-25-2, 40-25-4,
2 40-25-7, 40-25-8, 40-25-9, 40-25-13, 40-25-20 and 40-2A-10,
3 Code of Alabama 1975, are amended to read as follows:

4 "§40-25-1.

5 "For the purposes of this article, the following
6 terms shall have the respective meanings ascribed by this
7 section:

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

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

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

25 "~~(3)~~ (4) STAMPS. The stamp or stamps by the use of
26 which the tax levied under this article is paid and shall be
27 designated Alabama Revenue Stamps.

1 "§40-25-2.

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

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

21 "(2) FILTERED CIGARS. Upon cigarette-sized filtered
22 cigars made of tobacco, or any substitute therefor and
23 packaged in any quantity, the tax shall be \$0.015 for each
24 filtered cigar.

25 "~~(2)~~ (3) CHEROOTS, STOGIES, CIGARS, ETC. Upon cigars
26 of all descriptions made of tobacco, or any substitute
27 therefor, ~~retailing for three and one-third cents each or~~

1 ~~less, \$3 per 1,000 the tax shall be \$40.50 per thousand cigars~~
2 ~~or \$0.0405 each.~~

3 ~~"(3) CIGARS. Upon cigars of all descriptions made of~~
4 ~~tobacco, or any substitute therefor, retailing for more than~~
5 ~~three and one-third cents each and not more than \$.05 each, \$6~~
6 ~~per 1,000.~~

7 ~~"(4) CIGARS. Upon cigars of all descriptions made of~~
8 ~~tobacco, or any substitute therefor, retailing for more than~~
9 ~~\$.05 each and not exceeding \$.08 each, \$9 per 1,000.~~

10 ~~"(5) CIGARS. Upon cigars of all descriptions made of~~
11 ~~tobacco, or any substitute therefor, retailing for more than~~
12 ~~\$.08 each and not exceeding \$.10 each, \$15 per 1,000.~~

13 ~~"(6) CIGARS. Upon cigars of all descriptions made of~~
14 ~~tobacco, or any substitute therefor, retailing for more than~~
15 ~~\$.10 each and not exceeding \$.20 each, \$30 per 1,000.~~

16 ~~"(7) CIGARS. Upon cigars of all descriptions made of~~
17 ~~tobacco, or any substitute therefor, retailing for more than~~
18 ~~\$.20 each, \$40.50 per 1,000.~~

19 ~~"(8) (4) CIGARETTES. Upon all cigarettes made of~~
20 ~~tobacco, or any substitute therefor, 21.25 mills on each such~~
21 ~~cigarette.~~

22 ~~"(9) (5) SMOKING TOBACCO. Upon all smoking tobacco,~~
23 ~~including granulated, plug cut, crimp cut, ready rubbed, and~~
24 ~~other kinds and forms of tobacco prepared in such manner as to~~
25 ~~be suitable for smoking in a pipe or cigarette, upon each~~
26 ~~package: Weighing not more than one and one-eighth ounces, tax~~
27 ~~\$.04; over one and one-eighth ounces, not exceeding two~~

1 ounces, tax \$.10; over two ounces, not exceeding three ounces,
2 tax \$.16; over three ounces, not exceeding four ounces, tax
3 \$.21; \$.06 additional tax for each ounce or fractional part
4 thereof over four ounces.

5 "~~(10)~~(6) CHEWING TOBACCO. Upon all chewing tobacco
6 prepared in such manner as to be suitable for chewing only and
7 not suitable for smoking as described and taxed in subdivision
8 (9) of this subsection: \$.015 per ounce or fractional part
9 thereof.

10 "~~(11)~~(7) SNUFF. Upon each can or package of snuff
11 weighing not more than five-eighths ounces, one cent tax; over
12 five-eighths ounces and not exceeding one and five-eighths
13 ounces, \$.02 tax; over one and five-eighths ounces and not
14 exceeding two and one-half ounces, \$.04 tax; over two and
15 one-half ounces and not exceeding five ounces (cans, packages,
16 gullets), \$.06 tax; over three ounces and not exceeding five
17 ounces (glasses, tumblers, bottles), seven cents tax; over
18 five ounces and not exceeding six ounces, \$.08 tax; weighing
19 over six ounces, an additional \$.12 for each ounce or
20 fractional part thereof.

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

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

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

10 "~~(e)~~(c) When any articles or commodities subject to
11 tax in this article are given as prizes on punch boards,
12 shooting galleries, premiums, etc., the tax shall be based on
13 the ordinary retail selling price of such articles.

14 "~~(f)~~(d) The tax herein levied shall be paid to the
15 state through the use of stamps as herein provided. However,
16 every wholesaler, distributor, jobber, semijobber or retail
17 dealer shall add the amount of the tax levied herein to the
18 price of the tobacco or tobacco products sold, it being the
19 purpose and intent of this provision that the tax levied is in
20 fact a levy on the ultimate consumer or user with the
21 wholesaler, distributor, jobber, semijobber or retail dealer
22 acting merely as an agent of the state for the collection and
23 payment of the tax to the state. Therefore, notwithstanding
24 any exemptions from taxes which any such seller may now or
25 hereafter enjoy under the Constitution or laws of this or any
26 other state, or of the United States, he shall collect the tax
27 imposed hereunder from the purchaser or consumer, and the

1 amount of the tax shall constitute a debt from the purchaser
2 or consumer to the seller until paid. It shall be unlawful for
3 any person, firm, corporation, association, or copartnership
4 to fail or refuse to add to the sales price and collect from
5 the purchaser the amount of the tax to be added to the sales
6 price and collected from the purchaser hereunder. Stamps in
7 denominations to the amount of the tax or in denominations
8 specified pursuant to subsection ~~(g)~~ (e) of this section shall
9 be affixed to the box or other container from or in which
10 tobacco products taxed by this section are normally sold at
11 retail. The stamps shall be affixed in such a manner that
12 their removal will require continued application of water, ~~or~~
13 steam, or heat; and in case of cigars, cheroots, chewing
14 tobacco and like manufactured tobacco products, where sales
15 are made from the original container, the stamps shall be
16 affixed to the box or container in such a way that the stamps
17 shall be torn in two or mutilated when such containers or
18 boxes are opened for the sale of the tobacco products. In the
19 case of cigarettes, smoking tobacco, snuff and like products
20 sold at retail in packages, the required amount of stamps to
21 cover the tax shall be affixed to each individual package or
22 container. All taxable tobaccos herein enumerated, when
23 offered for sale, either at wholesale or retail, without
24 having stamps affixed in the manner set out by this article,
25 or without payment of the tax by return by the wholesaler,
26 jobber, semijobber, or registered retailer, shall be subject

1 to confiscation, in the manner provided for contraband goods
2 as set out in this article.

3 ~~"(g)~~ (e) The Commissioner of Revenue shall prepare
4 and issue stamps in denominations for the amount of the tax
5 imposed by this article provided that if the commissioner
6 determines that it is not economical for the state to have a
7 stamp prepared and issued for one or more particular types of
8 packages of tobacco products, then he may by regulation
9 prescribe the use of a stamp in a denomination other than for
10 the amount of the tax imposed with the difference between the
11 amount of tax actually imposed and the amount of tax
12 denominated by the stamp paid with the use of a monthly
13 report; or he may require a monthly report without use of a
14 stamp to report the amount of taxes due.

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

26 ~~"(i)~~ (g) Local taxes and/or license fees, county or
27 municipal, imposed on the sale or use of cigarettes shall be

1 paid to the local government through the use of stamps affixed
2 to the product as provided herein for the state tax. Provided,
3 however, this requirement shall not be interpreted to require
4 the Department of Revenue to prepare all stamps or to collect
5 all local taxes. Local governments may contract with another
6 entity to collect their local cigarette tax but all local
7 taxes must be collected as provided herein.

8 "§40-25-4.

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

1 cigarettes, smoking tobacco, and snuff shall actually begin
2 within one hour after receipt of the cigars, stogies,
3 cheroots, chewing tobacco, cigarettes, smoking tobacco, and
4 snuff in the premises of the wholesale or retail dealer,
5 except wholesalers who are issued a permit by the Department
6 of Revenue, and the stamping shall be continued with
7 reasonable diligence by the wholesale or retail dealer until
8 all of the unstamped cigars, stogies, cheroots, chewing
9 tobacco, cigarettes, smoking tobacco, and snuff have been
10 stamped ~~and the stamps cancelled as provided by law.~~
11 Wholesalers who have been issued a permit by the department
12 shall affix the required stamps prior to any sale. Every
13 wholesale dealer shall at the time of shipping or delivering
14 any tobacco products as enumerated herein make a true
15 duplicate invoice of the same which shall show full and
16 complete details of the sale or delivery of the taxable
17 article, shall state the tobacco tax separately from the price
18 of the tobacco products, and shall retain the same subject to
19 the use and inspection of the Department of Revenue, or its
20 duly authorized agents for a period of three years. Wholesaler
21 invoices must be computer or machine generated and the
22 seller's or supplier's name must be on the invoice.
23 Handwritten invoices may not be considered legitimate
24 documentations to substantiate proof of sale. Wholesale and
25 retail dealers shall also keep a record of purchases of all
26 tobacco products enumerated and defined in this article and
27 hold all books, records, and memoranda pertaining to the

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

24 "§40-25-7.

25 "Any retail dealer or semijobber of tobacco products
26 enumerated and defined in this article purchasing, or
27 receiving such commodities from without the state, whether the

1 same shall have been ordered or purchased through a wholesaler
2 or jobber in this state, or by drop shipment or otherwise,
3 shall within 12 hours of receipt of such tobacco products,
4 ~~mail by certified or registered mail~~ provide electronically, a
5 true duplicate invoice of all such purchases or receipts to
6 the Department of Revenue ~~at Montgomery, Alabama~~, said invoice
7 carrying the name of the person or firm from whom or through
8 whom such purchases or shipments of the tobacco products so
9 received, showing kinds and quantities. Any retail dealer or
10 semijobber failing or refusing to furnish duplicate invoices,
11 in both the manner and time allowed, ~~shall be guilty of a~~
12 ~~misdemeanor and upon conviction shall be punished by a fine of~~
13 ~~not less than \$50 for each offense, or imprisonment in the~~
14 ~~county jail for a period not exceeding 60 days~~ may be subject
15 to a department imposed penalty of not less than one thousand
16 dollars (\$1,000) nor more than five thousand dollars (\$5,000),
17 to be multiplied by the sum of the current violation plus
18 prior violations of this subsection. Tobacco products imported
19 by retail dealers and semijobbers in which a true and
20 duplicate invoice has not been received by the department are
21 considered contraband and subject to confiscation as provided
22 for in this chapter.

23 "§40-25-8.

24 "Any cigarettes, smoking tobacco, cigars, stogies,
25 cheroots, chewing tobacco, snuff, or other products taxable
26 under this article found at any point within the State of
27 Alabama, which the cigarettes, smoking tobacco, cigars,

1 stogies, cheroots, chewing tobacco, snuff, or other products
2 taxable under this article shall have been within the State of
3 Alabama for a period of two hours, or longer, in possession of
4 any retailer or semijobber not having affixed to the package
5 the stamps as provided in this article, or in the case of
6 products not requiring a stamp to be affixed where purchase
7 invoices do not itemize the applicable tobacco taxes, are
8 declared to be contraband goods and may be seized by the
9 Department of Revenue, or its agents or by any peace officer
10 of the State of Alabama, without a warrant and the goods shall
11 be delivered to the Department of Revenue for ~~sale at public~~
12 ~~auction to the highest bidder after due advertisement.~~ The
13 ~~Department of Revenue before delivering any of the goods so~~
14 ~~seized shall require the purchaser to affix the proper amount~~
15 ~~of stamps to the individual package as above defined. The~~
16 ~~proceeds of sale for any goods sold hereunder shall be turned~~
17 ~~over to the Treasurer by the Department of Revenue as other~~
18 ~~funds collected by the department. The cost of confiscation~~
19 ~~and sale shall be paid out of the proceeds derived from the~~
20 ~~sale before making remittance to the Treasurer destruction.~~
21 Any of the goods, wares, or merchandise when offered for sale,
22 either at wholesale or retail without the stamps having been
23 first affixed, or in the case of products not requiring a
24 stamp to be affixed where purchase invoices do not itemize the
25 applicable tobacco taxes, shall be subject to confiscation as
26 hereinabove provided. Any untaxed cigarettes, smoking tobacco,
27 cigars, stogies, cheroots, chewing tobacco, snuff, or other

1 products taxable under this article found at any location
2 within the State of Alabama, other than the primary location
3 of the permitted wholesaler or jobber, registered semijobber,
4 registered retailer or tobacco products manufacturer who
5 stores tobacco products at a bonded warehouse in this state
6 for resale, are declared to be contraband goods, and those
7 goods may be seized by the Department of Revenue, or its
8 agents or by any peace officer of the State of Alabama,
9 without a warrant and the goods shall be delivered to the
10 Department of Revenue for destruction. Any vehicle, not a
11 common carrier, used for the transportation for the purpose of
12 sale of unstamped articles as hereinabove enumerated shall
13 likewise be subject to confiscation and sale ~~in the same~~
14 ~~manner as above provided for unstamped goods, wares, or~~
15 ~~merchandise~~ at public auction to the highest bidder after due
16 advertisement and notice to the title owner of the vehicle.
17 The proceeds of sale for any vehicle sold hereunder shall be
18 deposited into the State Treasury by the Department of Revenue
19 to be credited in the same manner as the tax otherwise due on
20 the tobacco products being transported. The cost of
21 confiscation and sale shall be paid out of the proceeds
22 derived from the sale before making remittance to the
23 Treasurer. Should any unstamped tobaccos be found in any
24 vehicle which is engaged in the sale, distribution, or
25 delivery of taxable tobaccos, the same shall be prima facie
26 evidence that it was there for sale.

27 "§40-25-9.

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

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

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

1 claim in writing within 30 days from the date of the first
2 posting of such notice.

3 "(3) Any person claiming the said goods, wares or
4 merchandise or other property so seized as contraband within
5 the time specified in the notice may file with the Department
6 of Revenue a claim in writing, stating his interest in the
7 articles seized and may execute a bond to the Department of
8 Revenue in a penal sum equal to double the value of said goods
9 so seized, but in no case shall said bond be less than the sum
10 of \$200, with sureties to be approved by the clerk of the
11 circuit court in the county in which the goods are seized,
12 conditioned that in the case of condemnation of the articles
13 so seized, the obligors shall pay to the Department of Revenue
14 the full value of the goods so seized and all costs and
15 expenses of the proceedings to obtain such condemnation,
16 including a reasonable attorney's fee. And upon the delivery
17 of such bond to the Department of Revenue, it shall transmit
18 the same with the duplicate list or description of the goods
19 seized to the district attorney of the circuit in which such
20 seizure was made, and the said district attorney shall file a
21 complaint in the circuit court of the county where the seizure
22 was made to secure the forfeiture of said goods, wares,
23 merchandise or other property. Upon the filing of the bond
24 aforesaid the said goods shall be delivered to the claimant
25 pending the outcome of said case; provided, that said claimant
26 must purchase the proper stamps to be affixed to each article
27 of tobacco before the goods are delivered to the claimant by

1 ~~the Department of Revenue goods must have the proper stamps~~
2 ~~affixed to each such article of tobacco before turning same~~
3 ~~over to claimant, the stamps so affixed to be paid for by~~
4 ~~claimant when goods properly stamped are delivered by the~~
5 ~~Department of Revenue.~~

6 "(4) If no claim is interposed and no bond given
7 within the time above specified, such goods, wares,
8 merchandise or other property shall be forfeited without
9 further proceedings and the same shall be destroyed, if
10 tobacco goods, or sold as herein provided at auction, if a
11 vehicle. The proceeds of sale when received by the Department
12 of Revenue shall be turned in to the Treasury as other
13 revenues are required by law to be turned in. ~~In seizure in~~
14 ~~quantities of less value than \$50, the same may be advertised~~
15 ~~with other quantities at Montgomery, Alabama, by the~~
16 ~~Department of Revenue and disposed of as hereinabove provided.~~
17 The proceedings against goods, merchandise or other property
18 pursuant to the provisions of this article shall be considered
19 as proceedings in rem unless otherwise provided. Should the
20 Department of Revenue have to resort to the courts for
21 collection of the tax due and assessed, no advertisement shall
22 be made and the confiscated tobaccos may be held as evidence
23 pending the results of court action.

24 "§40-25-13.

25 "It shall be the duty of every person, firm,
26 corporation, club, or association of persons, receiving,
27 storing, selling, or handling tobacco products enumerated

1 herein in any manner whatsoever to keep and preserve all
2 invoices, books, papers, cancelled checks, or other memoranda
3 touching the purchase, sale, exchange, or receipt of any and
4 all tobacco products enumerated herein. All such invoices,
5 books, papers, cancelled checks, or other memoranda shall be
6 subject to audit and inspection by any duly authorized
7 representative of the Department of Revenue at any and all
8 times. Each operator of a retail outlet shall receive,
9 examine, and retain the purchase invoice from the source of
10 the tobacco products for every purchase of tobacco products
11 for a period of 90 days at the retail location. At the end of
12 the 90 days, the purchase records shall be maintained with the
13 required books and records for a period of three years from
14 the date of purchase. Invoices received by the retailer dealer
15 must be computer or machine generated and must show the
16 seller's or supplier's name. Invoices cannot be handwritten.
17 Failure to acquire appropriate invoices, substantiate tax
18 payment or retain invoices in the above manner may result in
19 confiscation of the tobacco products in accordance with the
20 procedures of this chapter. Any person, firm, corporation,
21 club, or association of persons who fails or refuses to keep
22 and preserve the records as herein required, or who upon
23 request by a duly authorized agent of the Department of
24 Revenue fails or refuses to allow an audit or inspection of
25 records as hereinabove provided shall be guilty of a
26 misdemeanor and shall upon conviction be punished by a fine of
27 not less than \$50 nor more than \$200, or imprisonment in the

1 ~~county jail for a period not to exceed 90 days for each~~
2 ~~offense may result in a department imposed penalty of not less~~
3 ~~than five hundred dollars (\$500) nor more than one thousand~~
4 ~~dollars (\$1,000). This penalty is multiplied by the number of~~
5 ~~violations of this subsection.~~

6 "§40-25-20.

7 "Any person, firm, corporation, club, or association
8 of persons, who shall reuse or refill with any tobacco
9 products enumerated herein any box, package or container from
10 which tobacco products theretofore tax-paid have been removed,
11 ~~shall be guilty of a misdemeanor and upon conviction shall be~~
12 ~~fined not less than \$100 nor more than \$500 or imprisoned not~~
13 ~~to exceed six months, either or both, at the discretion of the~~
14 ~~court or who otherwise violates any provision of this chapter,~~
15 ~~may be subject to a department imposed penalty of not less~~
16 ~~than five hundred dollars (\$500) nor more than one thousand~~
17 ~~dollars (\$1,000). This penalty is multiplied by the number of~~
18 ~~violations of this subsection.~~

19 "§40-2A-10.

20 "(a) Except as otherwise provided in this section,
21 it shall be unlawful for any person to print, publish, or
22 divulge, without the written permission or approval of the
23 taxpayer, the return of any taxpayer or any part of the
24 return, or any information secured in arriving at the amount
25 of tax or value reported, for any purpose other than the
26 proper administration of any matter administered by the
27 department, a county, or a municipality, or upon order of any

1 court, or as otherwise allowed in this section. Statistical
2 information pertaining to taxes may be disclosed at the
3 discretion of the commissioner or his or her delegate to the
4 legislative or executive branch of the state. Upon request,
5 the commissioner or his or her delegate may make written
6 disclosure as to the status of compliance of entities subject
7 to the requirements contained in Chapter 14, prior to its
8 repeal, and Chapter 14A, as applicable. A good standing
9 certificate shall be issued to a requesting person with
10 respect to a business entity if the entity has filed all state
11 tax returns required under Chapter 14, prior to its repeal,
12 and Chapter 14A, as applicable, and paid the taxes shown as
13 payable in accordance with those returns. Any person found
14 guilty of violating this section shall, for each act of
15 disclosure, have committed a Class A misdemeanor.
16 Additionally, to the extent provided in 26 U.S.C. § 7213A, it
17 shall be unlawful for any state employee willfully to inspect,
18 except as authorized in 26 U.S.C. § 6103, any federal tax
19 return or federal tax return information acquired by the
20 employee or another person under a provision of 26 U.S.C. §
21 6103 referred to in 26 U.S.C. § 7213(a)(2).

22 "(b) This section shall not apply to returns filed
23 and information secured under laws of the state (1) governing
24 the registration and titling of motor vehicles, (2) levying or
25 imposing excise taxes or inspection fees upon the sale of,
26 use, and other disposition of gasoline and other petroleum
27 products, (3) governing the licensing of motor vehicle

1 dealers, reconditioners, rebuilders, wholesalers, and
2 automotive dismantlers and parts recyclers, (4) governing the
3 privilege licenses as provided in Chapter 12, other than
4 Article 4, of this title or (5) governing the issuance or
5 affixing of tobacco stamps and governing the online web site
6 listing of permitted and registered tobacco distributors
7 required under Chapter 25.

8 "(c) This section shall not apply to the disclosure
9 of the amount of local privilege license or franchise fees
10 paid to counties and municipalities by any taxpayer possessing
11 a franchise (whether or not exclusive) granted by the
12 respective county or municipality. However, any information
13 other than the amount of license or franchise fees paid,
14 including returns or parts thereof or documents filed with or
15 secured by any municipality or county or their authorized
16 agent and relating to local privilege licenses and franchises
17 shall remain confidential information subject to subsection
18 (a).

19 "(d) Except as otherwise provided in subsection (m)
20 of Section 40-2A-9, the orders of the administrative law judge
21 and all evidence, pleadings, and any other information offered
22 or submitted in any appeal before the Administrative Law
23 Division are not subject to this section.

24 "(e) The commissioner shall promulgate reasonable
25 regulations permitting and governing the exchange of tax
26 returns, information, records, and other documents secured by
27 the department, with tax officers of other agencies of the

1 state, municipal, and county government agencies in the state,
2 federal government agencies, any association of state
3 government tax agencies, any state government tax agencies of
4 other states, and any foreign government tax agencies.

5 However, (1) any tax returns, information, records, or other
6 documents remain subject to the confidentiality provisions set
7 forth in subsection (a); (2) the department may charge a
8 reasonable fee for providing information or documents for the
9 benefit of self-administered counties and municipalities; (3)
10 self-administered counties and municipalities may charge a
11 reasonable fee for providing information or documents for the
12 benefit of the department; and (4) any exchange shall be for
13 one or more of the following purposes:

14 "a. Collecting taxes due.

15 "b. Ascertaining the amount of taxes due from any
16 person.

17 "c. Determining whether a person is liable for, or
18 whether there is probable cause for believing a person might
19 be liable for, the payment of any tax to a federal, state,
20 county, municipal, or foreign government agency.

21 "(f) (1) Nothing herein shall prohibit the use of tax
22 returns or tax information by the department or county tax
23 collecting officials in the proper administration of any
24 matter administered by the department or county tax collecting
25 officials. The department, a municipality, or county tax
26 official may also divulge to a purchaser, prospective
27 purchaser, as defined pursuant to the regulations of the

1 department, or successor of a business or stock of goods the
2 outstanding sales, use, or rental tax liability of the seller
3 for which the purchaser, prospective purchaser, as defined
4 pursuant to the regulations of the department, or successor
5 may be liable pursuant to Section 40-23-25, 40-23-82, or
6 40-12-224. This section shall not preclude the inspection of
7 returns by federal or foreign state agents pursuant to Section
8 40-18-53.

9 "(2) Upon a request by the State Treasurer, the
10 commissioner may provide the State Treasurer with the names
11 and addresses of those persons entitled to property acquired
12 by the state under Article 2 of Chapter 12 of Title 35, the
13 Uniform Disposition of Unclaimed Property Act. The information
14 shall be used by the State Treasurer solely for the purpose of
15 administering the Uniform Disposition of Unclaimed Property
16 Act.

17 "(g) Nothing herein shall prohibit the exchange of
18 information between and among county or municipal governments,
19 provided that any exchange shall be subject to the same
20 restrictions and criminal penalties imposed on the department
21 and its personnel as described in this section.

22 "(h) In no event shall any damages, attorney fees,
23 or court costs be assessed against the state, a county, or a
24 municipal government under this section, nor shall any
25 damages, attorney fees, or court costs be assessed against
26 elected officials, officers, or employees of a state, county,
27 or municipal government."

1 Section 2. Section 40-25-16.1 is added to Chapter
2 25, Title 40 of the Code of Alabama 1975, as follows:

3 §40-25-16.1. Additional reporting requirements and
4 web site listing.

5 Each wholesaler, jobber, semijobber, registered
6 retailer, importer or any other person selling, receiving, or
7 distributing tobacco products in this state for resale shall
8 file a report of its activity to the Department of Revenue
9 between the first and twentieth of each month. The information
10 shall include, but not be limited to, the customer's name,
11 address, invoice number, invoice date, a description of the
12 tobacco products, the itemized tax, and any other information
13 required by the department.

14 No later than 90 days after the passage of the act
15 adding this section, the commissioner shall establish a web
16 site for listing each wholesaler, jobber, semijobber,
17 retailer, importer, or distributor of tobacco products that
18 have qualified or registered with the Department of Revenue.
19 Purchases of tobacco products made from an entity other than
20 the above permitted or registered entities appearing on the
21 department web site listing shall be subject to confiscation,
22 as provided for in this chapter.

23 Section 3. The provisions of this act are severable.
24 If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

1 Section 4. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 5. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.