

1 HB440  
2 216426-2  
3 By Representative South  
4 RFD: Ways and Means General Fund  
5 First Read: 03-MAR-22

8 SYNOPSIS: Under existing law, a person selling,  
9 receiving, or distributing tobacco products in this  
10 state for resale is required to file a report with  
11 the Department of Revenue.

12 Under existing law, a person transporting or  
13 distributing untaxed or unstamped tobacco products  
14 within this state is required to have an active  
15 tobacco permit or a transporter permit issued by  
16 the department.

17 Under existing law, unstamped and untaxed  
18 tobacco products found within the state for more  
19 than two hours in possession of a retailer may be  
20 seized by the department or by a law enforcement  
21 officer.

22 This bill would deem the sale of tobacco  
23 products when the purchaser uses a sales tax number  
24 to purchase the products to be a purchase for  
25 resale and would require the seller to obtain a  
26 tobacco account and report the sales monthly. The  
27 bill would also provide for penalties for

1 non-registered sellers who fail to obtain a tobacco  
2 tax account.

3 This bill would also authorize civil and  
4 criminal penalties relating to transporting or  
5 distributing unstamped or untaxed tobacco products  
6 by any person without an active tobacco permit or  
7 transporters permit, including seizure of the  
8 products and the vehicle used to transport the  
9 products.

10 Amendment 621 of the Constitution of Alabama  
11 of 1901, as amended by Amendment 890, now appearing  
12 as Section 111.05 of the Official ReCompilation of  
13 the Constitution of Alabama of 1901, as amended,  
14 prohibits a general law whose purpose or effect  
15 would be to require a new or increased expenditure  
16 of local funds from becoming effective with regard  
17 to a local governmental entity without enactment by  
18 a 2/3 vote unless: it comes within one of a number  
19 of specified exceptions; it is approved by the  
20 affected entity; or the Legislature appropriates  
21 funds, or provides a local source of revenue, to  
22 the entity for the purpose.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1           Relating to the sale and transportation of tobacco  
2 products; to amend Section 40-25-16.1, Code of Alabama 1975,  
3 to require sellers making sales of tobacco products to  
4 purchasers using sales tax numbers to obtain a tobacco account  
5 and report the sales on the monthly tobacco sales for resale  
6 report; to provide for penalties for non-registered tobacco  
7 sellers who fail to obtain a tobacco account; to add Sections  
8 40-25-8.1, 40-25-8.2, and 40-25-26.1 to the Code of Alabama  
9 1975, to provide civil and criminal penalties for transporting  
10 unstamped or untaxed tobacco products within the state without  
11 an active tobacco permit or transporters permit; and in  
12 connection therewith would have as its purpose or effect the  
13 requirement of a new or increased expenditure of local funds  
14 within the meaning of Amendment 621 of the Constitution of  
15 Alabama of 1901, as amended by Amendment 890, now appearing as  
16 Section 111.05 of the Official Recompilation of the  
17 Constitution of Alabama of 1901 as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19           Section 1. Section 40-25-16.1 Code of Alabama 1975,  
20 is amended to read as follows:

21           "§40-25-16.1.

22           "(a) Each wholesaler, jobber, semijobber, registered  
23 retailer, importer, or any other person selling, receiving, or  
24 distributing tobacco products in this state for resale shall  
25 file a report of its activity with the Department of Revenue  
26 between the first and twentieth of each month. The information  
27 shall include, but not be limited to, the customer's name,

1 address, invoice number, invoice date, a description of the  
2 tobacco products, the itemized tax, and any other information  
3 required by the department.

4 "(1) This subsection is enacted to aid the  
5 Department of Revenue in the enforcement of Section 40-23-260,  
6 which requires a seller of tobacco products selling or  
7 distributing to retailers in this state to report the sale of  
8 tobacco products if an exemption from the sales or use tax is  
9 claimed at the time of sale.

10 "(2) Any sale of tobacco products to a purchaser  
11 using a sales tax number to purchase the products is declared  
12 to be a purchase for resale, and the seller is required to  
13 obtain a tobacco account and report the sale on the monthly  
14 tobacco sales for resale report.

15 "(3) If a non-registered seller fails to obtain a  
16 tobacco account as required, the department may assess the  
17 following penalties:

18 "a. On the first violation, the non-registered  
19 seller shall be issued a written warning notice from the  
20 department. The notice shall advise the non-registered seller  
21 of the penalty due if the seller continues to fail to comply  
22 with this section.

23 "b. On a second violation of this section, the  
24 non-registered seller shall be assessed a civil penalty of one  
25 hundred dollars (\$100).

26 "c. On a third or subsequent violation, the  
27 non-registered seller shall be assessed a civil penalty of one

1 hundred dollars (\$100) multiplied by the total number of  
2 violations that have been imposed under this section.

3 "(b) No later than December 30, 2014, the The  
4 commissioner shall establish a web site for listing each  
5 wholesaler, jobber, semijobber, retailer, importer, or  
6 distributor of tobacco products that ~~have~~ has qualified or  
7 registered with the Department of Revenue. Purchases of  
8 tobacco products made from an entity other than the above  
9 permitted or registered entities appearing on the department  
10 ~~web site~~ website listing shall be subject to confiscation, as  
11 provided for in this chapter."

12 Section 2. Sections 40-25-8.1, 40-25-8.2, and  
13 40-25-26.1 are added to the Code of Alabama 1975, to read as  
14 follows:

15 §40-25-8.1.

16 (a) Each person, firm, corporation, club, or  
17 association that transports products required to be stamped as  
18 provided in Section 40-25-8, which are not stamped or on which  
19 tax has not been paid in accordance with Chapters 25 and 25A,  
20 upon the public highways, roads, or streets of this state is  
21 required to have an active tobacco permit or transporters  
22 permit under Chapter 25. Failure to obtain a permit prior to  
23 transporting the products is a violation of this section. A  
24 violation of this section may result in the products being  
25 declared contraband goods that may be seized without warrant  
26 by any law enforcement officer in this state. The contraband  
27 goods may be disposed of or destroyed by the law enforcement

1 officer in accordance with this chapter. In addition, a  
2 vehicle used in the transportation of confiscated products may  
3 be subject to confiscation by the law enforcement officer and  
4 sold at public auction to the highest bidder after due  
5 advertisement pursuant to Chapter 13 of Title 32.

6 (b) The owner or driver, or both, of a vehicle used  
7 in a violation of this section is guilty of a Class A  
8 misdemeanor unless the tobacco products being transported  
9 exceeds any of the following quantities: 25,000 cigars, 50,000  
10 filtered cigars, 50,000 little cigars, 50,000 cigarettes,  
11 25,000 cigar wraps, or 2,500 individual containers of loose or  
12 smokeless tobacco, in which case the owner or driver is guilty  
13 of a Class C felony. Any person convicted of a second or  
14 subsequent offense for a violation of this section is guilty  
15 of a Class C felony, regardless of the amount of tobacco  
16 products involved in the violation.

17 (c) This section shall not apply to individuals  
18 transporting tobacco for personal consumption as provided in  
19 Section 40-25-25.

20 §40-25-8.2.

21 (a) Proof of the destination of tobacco products  
22 being transported shall be provided upon request of any law  
23 enforcement officer in this state. The proof shall be  
24 verifiable by the law enforcement officer.

25 (b) This section shall not apply to tobacco products  
26 transported upon the public highways, roads, and streets of

1 this state if the tobacco products are being transported in  
2 interstate commerce.

3 (c) A person failing to present documentation  
4 required by this section may be subject to the following civil  
5 penalties to be assessed by the department:

6 (1) On the first violation of this section, the  
7 owner or driver shall be assessed a civil penalty of one  
8 hundred dollars (\$100).

9 (2) On a second or subsequent violation within a  
10 three-year period, a civil penalty of one hundred dollars  
11 (\$100) multiplied by the total number of violations within the  
12 three-year period shall be assessed.

13 (3) A person transporting tobacco products without  
14 possession of proper documentation shall be guilty of a Class  
15 A misdemeanor. Any person who has been convicted under this  
16 section shall be guilty of a Class C felony for a second or  
17 subsequent violation of this section, regardless of the amount  
18 of tobacco products involved in the violation.

19 (d) This section shall not apply to individuals  
20 transporting tobacco for personal consumption as provided in  
21 Section 40-25-25.

22 §40-25-26.1

23 The Department of Revenue may adopt rules to  
24 implement and administer this chapter.

25 Section 3. Although this bill would have as its  
26 purpose or effect the requirement of a new or increased  
27 expenditure of local funds, the bill is excluded from further



1 requirements and application under Amendment 621, as amended  
2 by Amendment 890, now appearing as Section 111.05 of the  
3 Official Recompilation of the Constitution of Alabama of 1901,  
4 as amended, because the bill defines a new crime or amends the  
5 definition of an existing crime.

6 Section 4. This act shall become effective January  
7 1, 2023, following its passage and approval by the Governor,  
8 or its otherwise becoming law.