ACT #2018-411

HB107

183676-3

By Representative Lee

RFD: State Government

First Read: 09-JAN-18

MAR 22 2018
RECEIVED
GOVERNOR'S OFFICE

ENROLLED, An Act,

To amend Section 11-51-90.2 of the Code of Alabama 1975, relating to the purchase of a municipal business license; to provide that a business license is not required for a person travelling through a municipality on business if the person is not operating a branch office or doing business in the municipality.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 11-51-90.2 of the Code of Alabama 1975, is amended to read as follows:

"§11-51-90.2

"(a) Every taxpayer required to purchase a business license under this chapter shall:

"(1) Purchase a business license for each location at which it does business in the municipality, except as otherwise provided by the municipality.

"(2) Except as provided in Section 11-51-193, with respect to taxpayers subject to state licensing board oversight, be classified into one or more of the following 2002 North American Industrial Classification System ("NAICS") sectors and applicable sub-sectors, industry groups, industries and U.S. industries thereunder:

SECTOR	NAICS TITLE	SUGGESTED BUSINESS LICENSE CODE GROUPING BY SAMPLE TOPIC OR CATEGORY	BASIS FOR LICENSE CALCULATION
111	Crop Production	Agriculture, farming, nursery, fruit, growers	Gross Receipts and/or Flat Rate
112	Animal Production	Animal, dairy, cattle, ranching, sheep, chicken	Gross Receipts and/or Flat Rate
113	Forestry and Logging	Forestry, logging, timber	Gross Receipts and/or Flat Rate
114	Fishing, Hunting, and	Fishing, hunting, supplies and equip-	Gross Receipts and/or Flat Rate

	Trapping	ment	
115	Support for Agriculture and Forestry	Cotton ginning, farm management, post-harvest activities	Gross Receipts and/or Flat Rate
211	Oil and Gas Extraction	Oil, gas, extraction, natural gas, crude	State Regulated [See, e.g. Section 40-20-2(c)]
212	Mining (except Oil and Gas)	Mining activities	Gross Receipts and/or Flat Rate Where not State Regulated
213	Support for Mining Ac-	Support activities for oil and gas	Gross Receipts and/or Flat Rate

	tivities	wells	Where not State Regulated
221	Utilities	Utilities, gas, electric, water, sewage, steam	State Regulated (See Section 11-51-129)
236	Building, Developing and General Contracting	Construction, building, general, residential, subdivisions	Gross Receipts and/or Flat Rate
237	Heavy Construction	Construction, heavy construction, highway, bridge, street	Gross Receipts and/or Flat Rate
238	Special Trade Con-	Construction, all special trades	Gross Receipts and/or Flat Rate

	tractors		
311	Food Manufacturing	Food manufacturing, animal, grain, fruit, dairy, meat, seafood	Gross Receipts, Flat Rate, or Value of Goods Produced
312	Beverage and Tobacco Products Manufacturing	Beverage manufacturing, soft drink, bottled water, breweries, ice	Gross Receipts and/or Flat Rate Where Not State Regulated, or Value of Goods Produced
313	Textile Mills	Mills, textile, fabric, yarn, carpet, canvas, rope, twine	Gross Receipts, Flat Rate, or Value of Goods Produced

314	Textile Product Mills	Other mill operations not covered in 313	Gross Receipts, Flat Rate, or Value of Goods Produced
315	Apparel Manufacturing	Apparel manufacturing, hosiery, men, women, children, lingerie	Gross Receipts, Flat Rate, or Value of Goods Produced
316	Leather and Allied Product Manufacturing	Leather manufacturing, shoes, luggage, handbag, related products	Gross Receipts, Flat Rate, or Value of Goods Produced
321	Wood Products Manufacturing	Wood products, sawmills, wood, preservation, veneer, trusses, millwork	Gross Receipts, Flat Rate, or Value of Goods Produced

322	Paper Manufacturing	Paper manufacturing, pulp, paper, converted products	Gross Receipts, Flat Rate, or Value of Goods Produced
323	Printing and Related Support Activities	Printing, lithographic, screen, quick, digital, books, handbills	Gross Receipts, Flat Rate, or Value of Goods Produced
324	Petroleum and Coal Products Manufacturing	Petroleum manufacturing, asphalt, roofing, paving, grease	Gross Receipts, Flat Rate, or Value of Goods Produced
325	Chemical	Chemical manufac-	Gross Receipts,

	Manufacturing	turing, wood, fertilizer, pesticide, paint, soap, other	Flat Rate, or Value of Goods Produced
326	Plastics and Rubber Product Manufacturing	Plastic and tire manufacture, pipe, hoses, belts, bottle, sheet, foam	Gross Receipts, Flat Rate, or Value of Goods Produced
327	Nonmetallic Mineral Product Manufacturing	Nonmetallic manufacturing, clay, glass, cement, lime, gypsum, other	Gross Receipts, Flat Rate, or Value of Goods Produced
331	Primary Metal Manufacturing	Metal manufacturing, iron, steel, aluminum, copper, other nonferrous	Gross Receipts, Flat Rate, or Value of Goods Produced

332	Fabricated Metal Product Manufacturing	Fabricated metal, cutlery, structural, ornamental, wire, machine shops	Gross Receipts, Flat Rate, or Value of Goods Produced
333	Machinery Manufacturing	Machinery manufacturing, farm, HVAC, office, industrial, engine, other	Gross Receipts, Flat Rate, or Value of Goods Produced
334	Computer and Electronic Product Manufacturing	Computers and electronics, peripherals, audio, video, circuit boards	Gross Receipts, Flat Rate, or Value of Goods Produced
335	Electrical Equipment Appliance Component Manufactur-	Electrical equipment, lighting, small appliance, battery, other	Gross Receipts, Flat Rate, or Value of Goods Produced

	ing		
336	Transportation Equipment Manufacturing	Transportation manufacturing, auto, truck, trailer, motor home, ship, boat, motorcycle	Gross Receipts, Flat Rate, or Value of Goods Produced
337	Furniture and Related Products Manufacturing	Furniture manufacturing, cabinets, office furniture, beds, kitchen	Gross Receipts, Flat Rate, or Value of Goods Produced
339	Misc. Manufacturing	Misc. manufacturing, medical, dental, jewelry, sporting goods, toys, signs, all other	Gross Receipts, Flat Rate, or Value of Goods Produced

421	Wholesale Trade, Durable Goods	Wholesale trade-durable, motor vehicle, home furniture, machinery, equipment	Gross Receipts and/or Flat Rate
422	Wholesale Trade, Non-Durable Goods	Wholesale trade-nondurable, paper, apparel, grocery, dairy, farm, beverages	Gross Receipts and/or Flat Rate
441	Motor Vehicle and Parts Dealer	Motor vehicles, automobiles, motorcycles, boats, parts, accessories	Gross Receipts and/or Flat Rate

442	Furniture and Home Furnishing Stores	Furniture stores, home, floor, furnishings, window, special products	Gross Receipts and/or Flat Rate
443	Electronics and Appliance Stores	Electronic and appliance store, household, radio, television, computer	Gross Receipts and/or Flat Rate
444	Building Material and Gardening Equipment Dealers	Building materials, hardware, paint, home center, wallpaper	Gross Receipts and/or Flat Rate
445	Food and Beverage Stores	Food and beverage stores, grocery, convenience, mar-	Gross Receipts and/or Flat Rate Where Not State

		kets, liquor, beer	Regulated
446	Health and Personal Care Stores	Health and personal care stores, drug, cosmetic, optical, health food	Gross Receipts and/or Flat Rate
447	Gasoline Stations	Gasoline stations, filling stations	Gross Receipts and/or Flat Rate Based on No. of Dispensers
448	Clothing and Accessories Stores	Clothing stores, men's women's, children, infants, shoe, jewelry, luggage	Gross Receipts and/or Flat Rate

451	Sporting Goods, Hobby, Book, Music	Sporting goods stores, hobby, toy, fish, gun, music, books	Gross Receipts and/or Flat Rate
452	General Merchandise	General merchandise stores, department, warehouse clubs, superstores	Gross Receipts and/or Flat Rate
453	Miscellaneous Store Retailers	Misc. store retailers, florist, gift, novelty, used, pets, art, tobacco	Gross Receipts and/or Flat Rate
454	Nonstore Retailers	Nonstore retailers, electronic shopping, mail order, vending, direct selling	Gross Receipts and/or Flat Rate

481	Air Transportation	Air transportation, airline tickets, shipping, freight, charters	Gross Receipts and/or Flat Rate Where Not State Regulated
482	Rail Transportation	Rail transportation, ticket offices, short line, freight	State Regulated and/or Flat Rate
483	Water Transportation	Water transportation, coastal, freight, inland, passenger, forwarders	Gross Receipts and/or Flat Rate Where Not State Regulated
484	Truck Trans-	Truck transporta-	Gross Receipts

	portation	tion, terminal, local, long-distance, freight	and/or Flat Rate Where Not State Regulated
485	Transit and Ground Passenger Transportation	Ground transportation, bus, taxi, limousine, charter, buggy	Gross Receipts and/or Flat Rate
487	Scenic and Sightseeing Transportation	Scenic and sightseeing, land, water, air, special	Gross Receipts and/or Flat Rate
492	Couriers and Messengers	Couriers and messengers, services, delivery	Gross Receipts and/or Flat Rate

493	Warehousing and Storage	Warehouse and storage, household, refrigerated, distribution, special	Gross Receipts, Flat Rate or Square Feet
511	Publishing Industries (except Internet)	Publishing, newspapers, periodicals, databases, software	Gross Receipts and/or Flat Rate
512	Motion Picture and Sound Recording Industry	Motion pictures and videos, theatres, recording, studios, drive-in	Gross Receipts and/or Flat Rate
515	Broadcasting (except	Broadcasting and radio, TV	Gross Receipts and/or Flat Rate

	Internet)		Where Not State Regulated
516	Internet Publishing and Broad-casting	Publications or broadcasting for Internet only	Gross Receipts and/or Flat Rate Where Not State Regulated
517	Telecommuni-cations	Providing, access to facilities for voice, data, text, sound and/or video	Gross Receipts and/or Flat Rate Where Not State Regulated
519	Information Services and Data Pro-cessing	Providing, storing, processing, and providing access to information	Gross Receipts and/or Flat Rate

522	Credit Intermediation and Related Activities	Credit companies and activities related to credit and mediation of credit	Gross Receipts and/or Flat Rate Where Not State Regulated. Banks and savings and loan associations are state regulated and are subject to the license tax authorized under Section 11-51-130 and under Section 11-51-131, respectively.
523	Securities, Commodity, Other Financial Products	Insurance companies, life, health, accident, and all other	Gross Receipts and/or Flat Rate Where Not State Regulated

524	Insurance Carriers and Related Activities	Insurance companies, fire, marine, and fire casualty	State Regulated
525	Funds, Trusts, Other Financial Vehicles	Funds, plans, and/or programs organized to pool securities or other assets for others, other than the Alabama Municipal Funding Corporation	Gross Receipts and/or Flat Rate Where Not State Regulated
531	Real Estate	Real estate, offices, agents, brokers, developers	Gross Receipts and/or Flat Rate Where Not State Regulated

532	Rental and Leasing Services	Rental and leasing, auto, truck, equipment, tangible property	Gross Receipts and/or Flat Rate
541	Professions, Scientific, Technical Services	Attorney, doctor, dentist, architect, engineer, vet, other professions	Gross Receipts for outdoor/billboard advertising; otherwise flat rate and/or gross receipts
551	Management of Companies and Enterprises	Management of companies and enterprises, offices, regional, corporate	Gross Receipts and/or Flat Rate Where Not State Regulated. For purposes of this chapter only, bank holding companies are state regulated and are sub-

			ject only to the license tax amount authorized under Section 11-51-130(a)(12).
561	Administrative and Support Services	Administrative and support services, office, employment, answering, travel	Gross Receipts and/or Flat Rate Where Not State Regulated
562	Waste Management and Remediation Services	Waste management, services, landfill, septic tank, companies, trucks	Gross Receipts and/or Flat Rate Where Not State Regulated
611	Educational Services	Educational services, business, secretarial, computer, technical,	Gross Receipts and/or Flat Rate Where Not State Regulated

		sports, other	
621	Ambulatory Health Care Services	Health care services, mental, outpatient, HMO, diagnostic, blood, dialysis, other	Gross Receipts and/or Flat Rate
622	Hospitals	Hospitals, surgical, substance abuse, psychiatric, specialty	Gross Receipts and/or Flat Rate Based on No. of Patients or Beds
623	Nursing and Residential Care Facilities	Nursing and residential care facilities, elderly, day care, assisted living	Gross Receipts and/or Flat Rate

624	Social Assistance	Social assistance, child, shelters, vocational, emergency	Gross Receipts and/or Flat Rate Where Not State Regulated
711	Performing Arts, Spectator Sports	Arts and sports, dance, musical, spectator, teams, tracks, promoters, agents	Gross Receipts and/or Flat Rate
712	Museums, Historical Sites and Similar	Museums, historical sites, zoos, botanical gardens, parks, special sites	Gross Receipts and/or Flat Rate
713	Amusement, Gambling and Related	Amusement and recreation, gambling, theme, arcade,	Gross Receipts and/or Flat Rate Where Not State

		golf, marinas, fitness	Regulated
721	Accomodations	Accommodations, hotel, travel, bed-and-breakfast, rooming houses, motel	Gross Receipts and/or Flat Rate
722	Food Services and Drinking Places	Food service and drinking places, restaurant, caterers, bar, lounge, club	Gross Receipts and/or Flat Rate
811	Repair and Maintenance	Repair and maintenance, automotive, electronic, commercial, residential, other	Gross Receipts and/or Flat Rate

812	Personal and Laundry Services	Personal care services, hair, nail, skin, barber, beauty, diet, tanning, funerals	Gross Receipts and/or Flat Rate
910	Category for:	Vending machines, pool tables, amusement devices, etc.	Gross Receipts and/or Flat Rate
920	Category for employees:	Employees: as in number of employees used in license calculation	Gross Receipts, Flat Rate or Number of Employees
930	Category for square feet:	Square feet used for warehousing,	Gross Receipts, Flat Rate or Num-

		large buildings, and other types	ber of Square Feet
923	Administration of Human Resource Programs	General Category	Gross Receipts and/or Flat Rate Where Applicable
924	Administration of Environmental Quality Programs	General Category	Gross Receipts and/or Flat Rate Where Applicable
925	Administration of Housing, Urban, Comm.	General Category	Gross Receipts and/or Flat Rate Where Applicable

926	Administration of Economic Programs	General Category	Gross Receipts and/or Flat Rate Where Applicable
927	Space Research and Technology	General Category	Gross Receipts and/or Flat Rate Where Applicable
928	National Security and International Affairs	General Category	Gross Receipts and/or Flat Rate Where Applicable
999	Unclassified Establishments	General Category	Gross Receipts or Flat Rate, Where Not State Regulated

"(3) Notwithstanding any provision of this chapter to the contrary, a business license is not required for a person travelling through a municipality on business if the person is not operating a branch office as provided in Section 11-51-90, or doing business in the municipality.

(b) The taxing jurisdiction's basis for determination of the business license tax for each sector shall correspond with the basis specified in subsection (a), such as gross receipts, flat rate, number of employees, or square footage. Provided, however, with respect to machines and other devices described in Sector 910 above, the municipality, in addition to a gross receipts-based or flat rate license, may require the taxpayer to purchase a decal for each machine or device located within the municipality. The charge for such decal shall not exceed the municipality's actual cost of the decal. Provided further, the taxing jurisdiction shall have authority to issue one license, rather than multiple licenses, to a business in accordance with the taxing jurisdiction's business license ordinance. To the extent that subsection (a) indicates that a business activity described in an NAICS sector is fully or partially state regulated, no taxing jurisdiction shall have authority to impose a business license tax in excess of the amount otherwise authorized by state law on the state regulated portion of such sector.

"(c) The measure of a municipal business license based on gross receipts shall be based on the taxpayer's gross receipts for the license year next preceding the current license year unless the taxpayer first began doing business in the municipality during the current license year, in which event the gross receipts shall be projected by the taxpayer for the remaining portion of the current license year. If the taxpayer's actual gross receipts for the short license year are either more or less than projected, the taxpayer's annualized gross receipts used in calculating its business license tax liability for the following license year shall be increased or decreased, respectively, by the amount of the difference. When annualizing the gross receipts for the short license year, the amount of the gross receipts projected by the taxpayer shall be divided by the number of full months the taxpayer was in business in the municipality and multiplied by 12; provided that each taxpayer shall be deemed to have been in business in the municipality for a minimum of one month for purposes of this calculation. If the taxpayer employs a fiscal year for federal and state income tax purposes, the taxpayer's gross receipts may be determined, at the option of the taxpayer, from the federal income tax return of the taxpayer for the fiscal year next preceding the current license year, provided that the gross receipts reported thereon reasonably reflect the financial condition of the taxpayer as of the December 31 next preceding the current license year, and the taxpayer so notifies the municipality either prior to or simultaneously with filing the first business license remittance form using fiscal year data. The taxpayer's use of fiscal year data, as provided above, shall constitute an irrevocable election to use fiscal year data with respect to the current and subsequent business license years unless the governing body of the municipality or its director of finance or other chief revenue officer or his or her designee consents otherwise. Provided, however, that nothing in this subsection shall prohibit a municipality from doing any of the following:

"(1) Creating one or more sub-sectors in each of the NAICS sectors listed in subsection (a) above, subject to the limitations regarding the basis for license calculation and subsections (e) and (f) below.

"(2) Levying and collecting any municipal tax, other than an annual business license, that now exists or that may hereafter be adopted pursuant to Section 11-51-90 or some other provision of state law, including, but not limited to, lodgings taxes, alcoholic beverage taxes, gasoline and motor fuel taxes, tobacco taxes, leasing or rental taxes, occupational taxes, sales and use taxes, and gross receipts taxes in the nature of a sales tax.

"(3) Allowing or requiring a taxpayer to purchase a minimum business license with respect to the short license year following 90 days of operations in the municipality, based on the amount which bears the same relationship to the actual amount of gross receipts during such preceding license year as the entire license year bears to the number of days during which the taxpayer was operating during such preceding license year. If the taxpayer did not commence operations until after the first day of the calendar year, the municipality may by ordinance require the taxpayer to remit the business license tax at the end of such 90 day period, or on December 31 of the current license year, whichever occurs first.

"(d) For purposes of subsection (a), the terms "state regulated" or "where not state regulated," when used with reference to a business listed in one of the NAICS sectors and any subsequently created sub-sector, mean and refer to other provisions of the Code of Alabama 1975, that deal with or limit the taxation of the respective business by municipalities, none of which are amended or repealed by this act.

"(e) Notwithstanding anything in this chapter to the contrary, the licenses authorized by Sections 11-51-130 and 11-51-131 are in lieu of any other business licenses authorized by this chapter, and banks and savings and loan associations subject to either of those sections are not subject to the business license taxes otherwise authorized by this chapter, regardless of whether one or more NAICS sectors or sub-sectors describe or include any business or activity of such bank or savings and loan association. Any municipal business license tax applicable to a bank holding company, as defined in Section 5-13B-2(f), shall not exceed the amount set forth in the schedule provided for banks under Section 11-51-130(a)(12). Provided, however, if a bank holding company is engaged in additional lines of business that do not fall within NAICS Sectors 551 or 522 and which are not considered financial in nature, as defined under federal banking law, the bank holding company shall take out and pay for a business license for each additional line of business so assessed by the municipality; provided further that for each separate additional business license, the gross receipts taxable under such license shall be only those gross receipts of the bank holding company which arise under the license for the respective additional line of business and not from a financial activity, as defined under federal banking law, or from an activity within NAICS Sector 551 or 522. This subsection (e) shall not apply to any subsidiary of a bank or savings and loan association.

"(f) Notwithstanding any provision of this chapter to the contrary, each of the several municipalities in this state may annually assess and collect from each utility or other entity described in Section 11-51-129 only one municipal business license tax for all lines of business classified in NAICS Sector 221, and the levy, collection and assessment of the single business license tax shall be subject to the provisions and limitations of Section 11-51-129 and Section 11-51-90A. If any such utility or entity described in Section 11-51-129 is engaged in one or more additional lines of business that do not fall within NAICS Sector 221, and if the additional line of business of such utility or other entity is so assessed by the municipality, then the utility or other entity shall take out and pay for a business license for that additional line of business, even if the utility or other entity does not meet the requirement in Section 11-51-95 that it must derive more than 10 percent of its gross receipts from the business falling within the NAICS sector during the preceding license year; provided however, that for each separate, additional business license, the gross receipts taxable under such license shall be only those gross receipts of the utility or other entity from business done within the municipality and which arise within the line of business which is the subject of the respective license."

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains. References to sections of the Code of Alabama 1975, or to sectors or sub-sectors of the 2002 North American Industrial Classification System (NAICS) shall mean and include references to any corresponding provision of subsequent state law or of a subsequent Industrial Classification System; provided, however, that references in this act to a particular section of the Code of Alabama 1975, or more generally to a business being "state regulated," to the extent those references are intended to impose limitations on the business license under a particular NAICS sector, shall not be deemed amended or superseded by an amendment to the corresponding NAICS sector or the issuance of additional NAICS sectors, sub-sectors or additional designations or of another Industrial Classification System.

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Mac McCutcheon

Speaker of the House of Representatives

Del Marsh

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 20-FEB-18.

Jeff Woodard
Clerk

Senate 21-MAR-18 Passed

APPROVED 3-28-2018

TIME 2:30 PM

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2018-411
Bill Num...: H-107

Recv'd 03/28/18 05:03pmKCW

105 ______

...ONAL SIGNATURES OF CO-SPONSORS

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HOUSE ACTION
(Continued)

REPORT OF 2ND STANDING COMMITTEE
This bill having been referred by the House to its standing committee on ______ was acted upon by such a committee in session, and returned therefrom to the House with the recommendation that it be

Passed, w/amend(s) ______ w/sub ______
this ______ day of ______, 20____,
______, Chairperson

HOUSE OF REPRESENTATIVES
R. 3 at length and passed
Yeas 95 Nays 0 Abs 0
Date 2-20-18
______
JEFF WOODARD, Clerk

SENATE ACTION
(Continued)

______, Chairperson

This bill having been referred to the Committee on Rules pursuant to Senate Rule 23 is reported to the Senate for assignment to the Committee on:

______

This ______ day of ______, 20______

Signed (Committee Chairperson)

Date: ______
Referred
Committee ______

DATE: ______ 20__
RE-REFERRED ☐ RE-COMMITTED ☐
Committee ______

This Bill was referred to the Standing Committee of the Senate on

______

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amd(s) ______ w/sub ______ w/eng sub ______
by a vote of
yeas ______ nays ______ abstain ______
this ______ day of ______ 20______
Chairperson