

1 HB151  
2 189555-1  
3 By Representative Johnson (R)  
4 RFD: Ways and Means Education  
5 First Read: 11-JAN-18

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8 SYNOPSIS: Under existing law, any person making retail  
9 sales of tangible personal property is required to  
10 obtain a license from the Department of Revenue.  
11 The licensee is required to collect sales tax from  
12 its customers and hold these taxes in trust for the  
13 state. The licensee must remit these taxes to the  
14 Department of Revenue as they become due.

15 This bill will require certain businesses  
16 registering for a new sales tax license or renewing  
17 an expired or cancelled license to acquire a  
18 one-time surety bond for a two year period and  
19 require certain existing licensees who become  
20 non-compliant to purchase and maintain a one-time  
21 surety bond for a two year period in order to  
22 ensure that the trust fund taxes collected by a  
23 licensee are received by the state.

24  
25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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2 To amend Section 40-23-6, Code of Alabama 1975,  
3 relating to the license required to engage in business; to  
4 require a one-time surety bond for a two year period for  
5 certain licensees.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 40-23-6, Code of Alabama 1975, is  
8 amended to read as follows:

9 "§40-23-6.

10 "(a) If any person shall engage in or continue in  
11 any business for which a privilege tax is imposed by Section  
12 40-23-2 as a condition precedent to engaging or continuing in  
13 such business, he shall apply for and obtain from the  
14 Department of Revenue a license to engage in and to conduct  
15 such business for the current tax year upon the condition that  
16 he shall pay the taxes accruing to the State of Alabama under  
17 the provisions of this division; provided, that no license  
18 shall be issued under the provisions of this division to any  
19 person who has not complied with the provisions of this  
20 division, and no provision of this division shall be construed  
21 as relieving any person from the payment of any license or  
22 privilege tax now or hereafter imposed by law.

23 "(b) (1) Any person applying for an initial license  
24 or the renewal of an expired or cancelled license on or after  
25 January 1, 2020, who is in the business of selling at retail  
26 products that may be purchased from a seller, as defined in  
27 Section 40-23-260, Code of Alabama 1975, shall be required to

1 purchase and maintain a one-time surety bond for a two year  
2 period, executed by the applicant as principal and by a  
3 corporate surety company qualified to do business in this  
4 state as surety, in the amount of twenty-five thousand dollars  
5 (\$25,000). The bond shall be in a form to be approved by the  
6 commissioner and shall be conditioned upon the licensee  
7 collecting and remitting sales tax pursuant to this chapter  
8 and any rules promulgated thereunder. The bond shall be  
9 payable to the commissioner and to his or her successors in  
10 office.

11 "(2) The department shall provide a waiver for the  
12 surety bond as required pursuant to subsection (b) (1) where  
13 the person applying for an initial license or the renewal of  
14 an expired or cancelled license and a current licensee are  
15 related parties as defined in Section 40-23-190(b), Code of  
16 Alabama 1975, or members of a controlled group of corporations  
17 as defined in 26 U.S.C. Section 1563, or with respect to any  
18 other business, whether or not incorporated, which would be  
19 members of a controlled group if similar rules applied to the  
20 business, and the related party's current licensee has been  
21 compliant over the previous two year period.

22 "(c) (1) Any licensee who becomes non-compliant in  
23 the collection and remittance of sales tax during any period  
24 occurring on or after January 1, 2020, shall be required to  
25 purchase and maintain a one-time surety bond for a two year  
26 period in the amount of the actual sales tax liability for the  
27 three months immediately preceding the non-compliant period,

1 however not less than the amount as prescribed in subsection  
2 (b) (1). For the purpose of this section, a licensee shall be  
3 deemed non-compliant when a final assessment that has been  
4 entered against the licensee is no longer subject to appeal  
5 and the licensee has not paid or otherwise satisfied the  
6 liability associated with the final assessment within thirty  
7 days from the date on which the final assessment was no longer  
8 subject to appeal. The surety bond shall be in a form to be  
9 approved by the commissioner and shall be conditioned upon the  
10 licensee collecting and remitting sales tax pursuant to this  
11 chapter and any rules promulgated thereunder. The bond shall  
12 be payable to the commissioner and to his or her successors in  
13 office.

14 "(2) The department shall notify a licensee at his  
15 or her last known address by first class U.S. mail or by  
16 certified mail, return receipt requested, when a bond is being  
17 required pursuant to subsection (c) (1). The licensee shall,  
18 within thirty days from the date the notice is mailed by the  
19 department, either file the bond as requested by the  
20 department or file a notice of appeal with the Alabama Tax  
21 Tribunal as allowed under Section 40-2A-8(a). The department  
22 may immediately cancel a license upon the expiration of the  
23 thirty day period set out above if the licensee fails to  
24 either provide the required surety bond or timely appeal to  
25 the Alabama Tax Tribunal. Furthermore, a cancelled license  
26 shall not be renewed until the licensee provides the required  
27 surety bond.

1                   "(d) After two years of continuous compliance, a  
2                   licensee shall be exempt from the surety bond requirement so  
3                   long as the licensee collects and timely remits sales tax  
4                   pursuant to this chapter and any rules promulgated  
5                   thereunder."

6                   Section 2. This act shall become effective  
7                   immediately following its passage and approval by the  
8                   Governor, or upon its otherwise becoming law.