

Bill No. HB 1977, 1st Eng.

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Horne moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 2, between lines 26 and 27,		
15			
16	insert:		
17	Section 1. Section 210.155, Florida Statutes, is		
18	created to read:		
19	<u>210.155 Registration as primary source of supply.--</u>		
20	<u>(1) DEFINITION.--As used in this section, "primary</u>		
21	<u>source of supply" means the cigarette manufacturer of the</u>		
22	<u>brand, except that, for a cigarette manufacturer outside of</u>		
23	<u>the United States, the primary source of supply may be the</u>		
24	<u>exclusive agent of the manufacturer of the brand, who, if the</u>		
25	<u>brand cannot be secured directly from the manufacturer by an</u>		
26	<u>American wholesale dealer, is the source closest to the</u>		
27	<u>manufacturer in the channel of commerce from whom the brand</u>		
28	<u>can be secured by an American permitholder.</u>		
29	<u>(2) TAX CONTROL REGISTRATION REQUIRED.--For purposes</u>		
30	<u>of tax revenue control, beginning on the effective date of</u>		
31	<u>this act, no person, firm, corporation, or other entity that</u>		

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1 is a primary source of supply may sell, offer for sale, accept
2 orders for sale, ship, or cause to be shipped into this state
3 any cigarettes to any wholesale dealer within the state
4 without having first registered as a primary source of supply
5 on forms provided by, and in such manner as prescribed by, the
6 division. The registration information shall include a listing
7 of the complete product line of the manufacturer which is
8 offered in Florida and the domestic plants from which it is
9 shipped, and shall be updated and submitted monthly, together
10 with a report of all shipments into the state, on forms and in
11 such manner prescribed by the division in rule. The division
12 may adopt rules to promulgate forms and procedures to
13 implement s. 210.55(2).

14 (3) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS
15 PROHIBITED; LIMITATION ON POSSESSION.--Beginning on the
16 effective date of this act, no holder of a wholesale dealer
17 permit may ship or cause to be shipped into this state, or
18 accept delivery of, from another state or a foreign country,
19 any cigarettes, except directly from a primary source of
20 supply, registered as required by subsection (2), for the
21 brand of cigarettes being shipped, except as provided in 26
22 U.S.C. ss. 5704(d) and 5754 for reexport through a bonded
23 warehouse or for return to the manufacturer.

24 (4) AFFIXING STAMPS; LABELING REQUIREMENTS.--No stamp,
25 decal, or other cover, including a tax stamp, may be affixed
26 to or made upon any package of cigarettes that is to be sold
27 within this state, except by the holder of an interim
28 wholesale dealer permit, unless that package complies with all
29 requirements of the Federal Cigarette Labeling and Advertising
30 Act for the placement of labels, warnings, and other
31 information. The placement of a tax stamp on any cigarette

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1 package does not authorize or affect acts which are otherwise
2 prohibited by this part.

3 (5) VIOLATION; SEIZURE; FORFEITURE.--Any cigarettes in
4 the possession of a wholesale dealer in violation of this
5 section shall be seized by the division and subject to
6 forfeiture, and the permit of the wholesale dealer shall be
7 subject to suspension for the first such offense and to
8 revocation for any subsequent offense. Any cigarettes in the
9 possession of a retail dealer on or after March 1, 2000, in
10 violation of this section shall be seized by the division and
11 subject to forfeiture, and the retail tobacco products dealer
12 permit of the retailer shall be subject to suspension for the
13 first such violation and revocation for any subsequent
14 violation. The holder of an interim permit may possess
15 cigarettes brought into this state prior to January 1, 2000,
16 for a period of 30 days after the expiration of such permit if
17 said cigarettes are not affixed with stamps issued by this
18 state.

19 (2) Subsection (3) of s. 210.155, Florida Statutes, as
20 created by this act, shall not apply to the holder of an
21 interim permit pursuant to s. 210.15(1)(b), Florida Statutes,
22 until January 1, 2000.

23 Section 2. Paragraphs (a), (b), (e), and (f) of
24 subsection (1) and subsections (3) and (4) of section 210.15,
25 Florida Statutes, are amended to read:

26 210.15 Permits.--

27 (1)(a) Every person, firm, or corporation desiring to
28 deal in cigarettes as a distributing agent, wholesale dealer,
29 or exporter within this state shall file an application for a
30 cigarette permit for each place of business with the Division
31 of Alcoholic Beverages and Tobacco. Every application for a

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1 cigarette permit shall be made on forms furnished by the
2 division and shall set forth the name under which the
3 applicant transacts or intends to transact business, the
4 location of the applicant's place of business within the
5 state, and such other information as the division may require.
6 If the applicant has or intends to have more than one place of
7 business dealing in cigarettes within this state, the
8 application shall state the location of each place of
9 business. If the applicant is an association, the application
10 shall set forth the names and addresses of the persons
11 constituting the association, and if a corporation, the names
12 and addresses of the principal officers thereof and any other
13 information prescribed by the division for the purpose of
14 identification. The application shall be signed and verified
15 by oath or affirmation by the owner, if a natural person, and
16 in the case of an association or partnership, any partner
17 ~~members or partners~~ thereof, and in the case of a corporation,
18 by an executive officer thereof or by any person specifically
19 authorized by the corporation to sign the application, to
20 which shall be attached the written evidence of this
21 authority. The cigarette permit for a distributing agent
22 shall be issued annually for which an annual fee of \$5 shall
23 be charged. No permit for a distributing agent or wholesale
24 dealer shall be issued prior to receipt of an affirmation, on
25 a form approved by the division, from each manufacturer whose
26 cigarettes the distributing agent or wholesale dealer intends
27 to stamp or distribute. This affirmation shall evidence the
28 manufacturer's intent to provide cigarettes to the applicant
29 and shall be signed and sworn to by an officer of the
30 corporation or principal of the partnership or sole
31 proprietorship manufacturing the cigarettes. In the case of

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1 cigarettes manufactured outside of the United States, the
2 affirmation form may be executed by the primary source of
3 supply registered with the division pursuant to s. 210.155.

4 (b) The holder of any duly issued, annual permit for a
5 distributing agent shall be entitled to a renewal of his or
6 her annual permit from year to year ~~as a matter of course~~, on
7 or before July 1 unless an alternative renewal date is
8 established by rule, upon making application to the division,
9 ~~and upon payment of this annual permit fee~~, and receipt by the
10 division of newly executed manufacturer's affirmation forms as
11 required by paragraph (a). The holder of a permit which was
12 issued prior to July 1, 1997, and continuously kept in effect
13 since issuance through March 1, 1999, shall be issued an
14 interim permit which is valid until March 1, 2000, without a
15 manufacturer's affirmation form, if such holder is otherwise
16 in compliance with this section.

17 (e) Prior to an application for a distributing agent,
18 wholesale dealer, or exporter permit being approved, the
19 applicant shall file a set of fingerprints when required by
20 the division on forms provided by the division. The applicant
21 shall also file a set of fingerprints for any person or
22 persons interested directly or indirectly with the applicant
23 in the business for which the permit is being sought, when so
24 required by the division. If the applicant or any person
25 interested with the applicant, either directly or indirectly,
26 in the business for which the permit is sought shall be such a
27 person as is within the definition of persons to whom a
28 distributing agent, wholesale dealer, or exporter permit shall
29 be denied, then the application may be denied by the division.
30 If the applicant is a partnership, all members of the
31 partnership are required to file said fingerprints, or if a

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1 corporation, all principal officers of the corporation are
2 required to file said fingerprints, when required by the
3 division. The cigarette permit for a wholesale dealer or
4 exporter shall be originally issued at a fee of \$100, which
5 sum is to cover the cost of the investigation required before
6 issuing such permit.

7 (f) The cigarette permit for a wholesale dealer or
8 exporter shall be renewed from year to year ~~as a matter of~~
9 ~~course~~, at an annual cost of \$100, on or before July 1 unless
10 an alternative renewal date is established by rule, upon
11 making application to the division, ~~and upon~~ payment of the
12 annual renewal fee, and receipt by the division of newly
13 executed manufacturer's affirmation forms as required by
14 paragraph (a). The holder of a permit which was issued prior
15 to July 1, 1997, and continuously kept in effect since
16 issuance through March 1, 1999, shall be issued an interim
17 permit which is valid until March 1, 2000, without a
18 manufacturer's affirmation form, if such holder is otherwise
19 in compliance with this section.

20 (3) Upon approval of the application, the division
21 shall ~~grant and~~ issue to each applicant a cigarette permit for
22 each place of business set forth in the application.
23 Cigarette permits shall not be assignable and shall be valid
24 only for the persons in whose names issued and for the
25 transaction of business at the places designated therein and
26 shall at all times be conspicuously displayed at the places
27 for which issued.

28 (4) All permits of distributing agents, wholesale
29 dealers, or exporters shall remain in force and effect until
30 July 1 following their issuance unless an alternative renewal
31 date is established, or until suspended or revoked for cause

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1 by the division, or surrendered by the permitholder.

2 Section 3. Section 210.151, Florida Statutes, is
3 amended to read:

4 210.151 Initial temporary cigarette ~~and other tobacco~~
5 ~~products~~ permits.--When a person has filed a completed
6 application which does not on its face disclose any reason for
7 denying a cigarette permit under s. 210.15, ~~or other tobacco~~
8 ~~products permit under s. 210.40~~, the Division of Alcoholic
9 Beverages and Tobacco of the Department of Business and
10 Professional Regulation shall issue a temporary initial permit
11 of the same type and series for which the application has been
12 submitted, which is valid for all purposes under this part
13 chapter. The application for a temporary cigarette permit must
14 be accompanied by the manufacturer's affirmation forms
15 required by s. 210.15(1)(a) prior to issuance of a temporary
16 permit.

17 ~~(1) A temporary initial permit shall be valid for up~~
18 ~~to 90 days and may be extended by the division for up to an~~
19 ~~additional 90 days for good cause. The division may at any~~
20 ~~time during such period grant or deny the permit applied for,~~
21 ~~notwithstanding s. 120.60.~~

22 ~~(1)(2)~~ A temporary initial permit expires on ~~and may~~
23 ~~not be continued or extended beyond~~ the date the division
24 denies the permit applied for; or beyond 14 days after the
25 date the division approves the permit applied for; or beyond
26 the date the applicant pays the permit fee and the division
27 issues the permit applied for; ~~or beyond the date the~~
28 ~~temporary permit otherwise expires by law, whichever date~~
29 occurs first.

30 ~~(2)(3)~~ Each applicant seeking a temporary initial
31 cigarette permit shall pay to the division for such permit a

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1 fee of \$100. ~~Each applicant seeking a temporary initial permit~~
2 ~~for other tobacco products shall pay to the division for such~~
3 ~~permit a fee of \$25.~~

4 (3)~~(4)~~ Any fee or penalty collected under the
5 provisions of this act shall be deposited into the Alcoholic
6 Beverage and Tobacco Trust Fund.

7 Section 4. Section 210.405, Florida Statutes, is
8 amended to read:

9 210.405 Initial temporary ~~cigarette and other~~ tobacco
10 products permits.--When a person has filed a completed
11 application which does not on its face disclose any reason for
12 denying a ~~cigarette permit under s. 210.15, or other~~ tobacco
13 products permit under s. 210.40, the Division of Alcoholic
14 Beverages and Tobacco of the Department of Business and
15 Professional Regulation shall issue a temporary initial permit
16 of the same type and series for which the application has been
17 submitted, which is valid for all purposes under this chapter.

18 ~~(1) A temporary initial permit shall be valid for up~~
19 ~~to 90 days and may be extended by the division for up to an~~
20 ~~additional 90 days for good cause. The division may at any~~
21 ~~time during such period grant or deny the permit applied for,~~
22 ~~notwithstanding s. 120.60.~~

23 (1)~~(2)~~ A temporary initial permit expires on ~~and may~~
24 ~~not be continued or extended beyond~~ the date the division
25 denies the permit applied for; or ~~beyond~~ 14 days after the
26 date the division approves the permit applied for; or ~~beyond~~
27 the date the applicant pays the permit fee and the division
28 issues the permit applied for; ~~or beyond the date the~~
29 ~~temporary permit otherwise expires by law, whichever date~~
30 occurs first.

31 (2)~~(3)~~ ~~Each applicant seeking a temporary initial~~

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1 ~~cigarette permit shall pay to the division for such permit a~~
2 ~~fee of \$100.~~ Each applicant seeking a temporary initial permit
3 for ~~other~~ tobacco products shall pay to the division for such
4 permit a fee of \$25.

5 (3)~~(4)~~ Any fee or penalty collected under the
6 provisions of this act shall be deposited into the Alcoholic
7 Beverage and Tobacco Trust Fund.

8 Section 5. Section 210.16, Florida Statutes, is
9 amended to read:

10 210.16 Revocation or suspension of permit or
11 registration.--

12 (1) The Division of Alcoholic Beverages and Tobacco is
13 given full power and authority to revoke the permit of any
14 wholesale dealer receiving a permit to engage in business
15 under this part for violation of any of the provisions of this
16 part or the registration of any primary source of supply for
17 violation of s. 210.155(2).

18 (2) The division may suspend for a reasonable period
19 of time, in its discretion, the permit ~~permits~~ of any
20 wholesale dealer ~~dealers~~ issued under the provisions of this
21 part or the registration of any primary source of supply for
22 the same causes and under the same limitations as is
23 authorized hereunder to revoke the permit ~~permits~~ of such
24 wholesale dealer or the registration of such primary source of
25 supply ~~dealers~~.

26 (3) No wholesale dealer whose permit for any place of
27 business has been revoked shall engage in business under this
28 part at such place of business after such revocation until a
29 new permit is issued. No wholesale dealer whose permit for
30 any place of business has been revoked shall be permitted to
31 have said permit renewed, or to obtain an additional cigarette

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1 permit for any other place of business, for a period of 6
2 months after the date such revocation becomes final. No
3 primary source of supply whose registration has been revoked
4 shall be permitted to have said registration renewed for a
5 period of 6 months after the date such revocation becomes
6 final.

7 (4) In lieu of the suspension or revocation of permits
8 or registrations, the division may impose civil penalties
9 against holders of permits for violations of this part or
10 rules and regulations relating thereto, or against holders of
11 registrations for violations of s. 210.155(2) or rules adopted
12 pursuant thereto. No civil penalty so imposed shall exceed
13 \$1,000 for each offense, except for violations of s. 210.155,
14 and all amounts collected shall be deposited with the State
15 Treasurer to the credit of the General Revenue Fund. Civil
16 penalties for violations of s. 210.155 by a retailer shall not
17 exceed \$1,000 for the first violation and \$5,000 for any
18 subsequent violation. Civil penalties for violations of s.
19 210.155 by the holder of a wholesale permit shall not exceed
20 \$10,000 for the first violation and \$25,000 for any subsequent
21 violation. Civil penalties for violations of s. 210.155(2) by
22 the holder of a registration as a primary source of supply
23 shall not exceed \$10,000 for the first violation and \$25,000
24 for any subsequent violation. A fine for violation of s.
25 210.155 shall count as a violation for purposes of s.
26 210.155(5).If the holder of the permit or registration fails
27 to pay the civil penalty, his or her permit or registration
28 shall be suspended for such period of time as the division may
29 specify.

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31 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, delete lines 2-4,

4

5 and insert:

6 An act relating to business and professional
7 regulation; creating s. 210.155, F.S.; defining
8 "primary source of supply"; requiring
9 registration of entities acting as a primary
10 source of supply; prohibiting wholesale dealers
11 from shipping or accepting delivery of
12 cigarettes from outside the state other than
13 directly from a primary source of supply;
14 providing a limitation on the possession of
15 cigarettes with certain labels; providing that
16 no stamp or other cover may be affixed to a
17 cigarette package that does not meet specified
18 labeling requirements; providing for seizure
19 and forfeiture of cigarettes in violation, and
20 for suspension and revocation of permits;
21 providing application to holders of interim
22 permits; amending s. 210.15, F.S.; revising
23 application requirements for permits for
24 distributing agents, wholesale dealers, and
25 exporters, and provisions relating to renewal
26 thereof; requiring submission of manufacturers'
27 affirmation forms by distributing agents and
28 wholesale dealers; authorizing issuance of
29 interim permits without such affirmation to
30 certain permitholders; amending ss. 210.151 and
31 210.405, F.S., relating to temporary initial

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1 cigarette and other tobacco products permits;
2 conforming language; revising provisions
3 relating to expiration of such permits;
4 specifying that manufacturers' affirmation
5 forms must be submitted prior to issuance of a
6 temporary cigarette permit; amending s. 210.16,
7 F.S.; providing for revocation and suspension
8 of registration of a primary source of supply;
9 providing limitations on renewal of
10 registration subsequent to revocation;
11 providing for civil penalties in lieu of
12 revocation or suspension and amounts thereof
13 for violations of s. 210.155, F.S., by
14 retailers, holders of wholesale permits, and
15 holders of registration as a primary source of
16 supply; specifying status of such fines;
17 creating

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