

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2248

SPONSOR: Committee on Regulated Industries and Senator Horne

SUBJECT: Tobacco Products/Cigarettes

DATE: April 20, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Guthrie	RI	Favorable/CS
2.			FR	
3.				
4.				
5.				

I. Summary:

The bill creates a regulatory structure that prohibits a wholesale dealer from purchasing cigarettes from anyone other than the person or entity registered with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation as the “primary source of supply” for those cigarettes. The “primary source of supply” is the manufacturer, or, for brands not available directly from a manufacturer located outside of the United States, the exclusive agent. A registration as a primary source of supply is made subject to revocation or suspension for violation of any of the provisions of Part I. A revoked registration cannot be renewed until 6 months after the date on which revocation becomes final.

The bill also provides for civil penalties against registrants for violations of the law or rule.

The bill substantially amends the following sections of the Florida Statutes: 210.15, 210.151, 210.405, and 210.16. It also creates section 210.155 of the Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Section 210.02, F.S., provides the amount of excise tax to be paid and requires that the excise taxes be paid to the division upon the first sale or transaction within this state. The payment of the tax is evidenced by affixing to the package of cigarettes either a stamp or a stamp insignia. s. 210.05, F.S. Each retail dealer is to open each box, carton, or other container of cigarettes prior to sale to ensure that the tax stamps have been properly affixed, s. 210.06, F.S. The division is authorized to seize and forfeit any cigarettes upon which the taxes have not been paid. s. 210.12, F.S.

Because of price differentials between cigarettes manufactured for the domestic market and those manufactured for export, it is possible under current law for a distributor to purchase cigarettes

that were intended for sale in foreign markets, pay the applicable federal and state excise taxes, and still obtain the product for less than it would cost to purchase cigarettes directly from the manufacturer. It is also possible to sell these cigarettes without affixing the state excise tax stamp. The division is unable to monitor each transaction, and is uncertain whether all taxes are being collected.

Recent amendments to the Internal Revenue Code will prohibit, effective January 1, 2000, the release from customs of cigarettes intended for export to anyone other than a manufacturer of tobacco products or a proprietor of an export warehouse. P.L. 105-33, 26 U.S.C. ss. 5704(d) and 5754. This will prohibit a Florida distributing agent or wholesale dealer from purchasing cigarettes intended for export and diverting them for sale in this state.

Section 210.15, F.S., requires every person desiring to deal in cigarettes in Florida as a distributing agent, wholesale dealer, or exporter to apply for a cigarette permit. Section 210.01, F.S., defines these terms. A distributing agent is any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state. A wholesale dealer is one who sells cigarettes to retail dealers for purposes of resale only, or who operates cigarette vending machines in more than one place of business. A retail dealer is any person other than a wholesale dealer engaged in the business of selling cigarettes. An exporter is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.

Sections 210.151 and 210.405, F.S., contain identical provisions for the issuance of temporary initial permits to sell cigarettes or tobacco products. These initial temporary permits are issued upon payment of the applicable fee and filing of a completed application which, on its face, does not disclose any impairment to licensure.

III. Effect of Proposed Changes:

Section 1 creates s. 210.155, F.S., and establishes a regulatory structure, similar to that for the regulation of wine, s. 564.045, F.S., and liquor, s. 565.095, F.S., that prohibits a wholesale dealer from purchasing cigarettes from anyone other than the “primary source of supply.” The term “primary source of supply” is defined as the cigarette manufacturer of the brand, except that, for a cigarette manufacturer outside of the United States, the primary source of supply may be the exclusive agent of the manufacturer of the brand, who, if the brand cannot be secured directly from the manufacturer by an American wholesale dealer, is the source closest to the manufacturer in the channel of commerce from whom the brand can be secured by an American permit holder.

For purposes of tax revenue control, a person, corporation, or other entity that is a primary source of supply must register with the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation before it may sell, offer for sale, accept orders for sale, ship, or cause to be shipped into this state any cigarettes to any wholesale dealer within the state. Registration must be on forms provided by, and in such manner as prescribed by, the division. The registration information must include a listing of the complete line of products the manufacturer offers in Florida and of the domestic plants from which it is shipped. This information must be updated and submitted monthly, together with a report of all shipments into

the state. The division is given authority to adopt rules to provide the necessary forms and procedures.

No wholesale dealer may ship cigarettes into this state or accept delivery of cigarettes from another state or a foreign country, unless the cigarettes come directly from a registered primary source of supply for the brand of cigarettes being shipped. Two exceptions are provided. The first is for cigarettes previously exported and returned to this country to a cigarette manufacturer or a bonded warehouse. The second is for a holder of an interim permit issued pursuant to s. 210.15(1)(b), discussed below. The requirement does not apply to such a holder until January 1, 2000.

No stamp, decal, or other cover, including a tax stamp, may be affixed to or made upon any package of cigarettes that is to be sold within this state unless that package complies with all requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings, and other information. (This act contains a statement of policy and purpose; definitions; specified warnings as to effects on health, with specifications as to location, print size, and factors affecting conspicuousness and legibility; and a statement of preemption of state law.) An exception is made for "the holder of an interim wholesale dealer permit." The placement of a stamp on any cigarette package does not authorize or affect acts that are otherwise prohibited.

Finally, any cigarettes in the possession of a wholesale dealer in violation of the new section are to be seized by the division and the permit of the wholesale dealer is subject to suspension for the first offense and to revocation for a subsequent offense. Any cigarettes that are in violation of this section and are in the possession of a retail dealer on or after March 1, 2000, are subject to seizure and forfeiture. The retail dealer's permit is subject to suspension for the first violation and to revocation for a subsequent offense. The holder of an interim permit may possess cigarettes brought into this state prior to January 1, 2000, for a period of 30 days after the expiration of the permit if the cigarettes are not affixed with the required Florida excise tax stamps.

Section 2 of the bill amends s. 210.15, F.S., on permits. The bill requires persons who apply for a permit as a distributing agent or wholesale dealer to file an "affirmation" on a form approved by the division. An affirmation is a statement from each manufacturer whose cigarettes the distributing agent or wholesale dealer intends to stamp or distribute which evidences the manufacturer's intent to provide cigarettes to the applicant. The affirmation must be signed and sworn to by an officer of the corporation or principal of the partnership or sole proprietorship manufacturing the cigarettes. In the case of cigarettes manufactured outside of the United States, the affirmation form may be executed by the registered primary source of supply.

Currently, the permit of a distributing agent, wholesale dealer, or exporter must be renewed on or before July 1 of the year following issuance. The bill authorizes the department to provide for a different renewal date by rule. The bill also requires the filing of a newly executed affirmation with the application for the renewal of the permit.

Paragraphs 210.15(1)(b) and (f), F.S., are amended to provide that the holder of a distributing agent, wholesale dealer, or exporter permit that was issued prior to July 1, 1997, and continuously kept in effect since issuance through March 1, 1999, is to be issued an interim permit, which is

valid until March 1, 2000, without a manufacturer's affirmation, if such holder is otherwise in compliance with the permitting section.

Current law requires that an applicant for a permit to be a distributing agent, wholesale dealer, or exporter file a set of fingerprints. The bill provides that this is necessary only when required by the division.

Section 3 and **Section 4** amend ss. 210.151 and 210.405, F.S., respectively. Part I of chapter 210 provides for the tax on cigarettes and Part II provides for the tax on other tobacco products. The amended sections are identical and provide, in each part, for the issuance of a temporary initial permit to sell cigarettes or other tobacco products. The bill amends s. 210.151, F.S., to apply only to cigarettes, and it amends s. 210.405, F.S., to apply only to other tobacco products. The current provision in each section that a temporary initial permit is valid for up to 90 days is removed. A temporary initial permit will expire upon the earlier of the date the division denies the permit, 14 days after the date the division approves the permit, or the date the applicant pays the permit fee and the division issues the permit. Additionally, s. 210.151, F.S., is amended to require the filing of a manufacturer's affirmation with the application for a temporary cigarette permit.

Section 5 amends s. 210.16, F.S., on revocation or suspension of permits to provide for revocation or suspension of a registration as a primary source of supply for violation of the registry statute requirements. A revoked registration cannot be renewed until 6 months after the date on which revocation becomes final.

Current law provides that a civil penalty may be imposed instead of suspension or revocation, with the amount of the penalty limited to \$1,000 for each offense. The bill establishes different civil penalty limitations for violations of the primary source of supply statute. For a retail dealer, the civil penalty may not exceed \$1,000 for the first violation and \$5,000 for a subsequent violation. For a wholesale dealer primary source of supply, the civil penalty may not exceed \$10,000 for the first violation and \$25,000 for a subsequent violation.

Section 6 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Proponents of the bill believe the new regulatory structure equalizes competition by ensuring that cigarette wholesalers who obtain their products from traditional domestic sources do not operate at a competitive disadvantage with wholesalers who obtain cigarettes at a reduced price via the international market.

Some wholesalers who deal only in previously exported cigarettes may cease operation since the financial advantage for purchasing exported cigarettes versus purchasing cigarettes through domestic channels will be eliminated.

Cigarette retailers purchasing cigarettes at a reduced cost from wholesalers who obtain products diverted from the international market will experience an increase in the cost of the product.

C. Government Sector Impact:

The Department of Business and Professional Regulation states that no new fees will be generated by the bill to pay the cost of the new regulatory program. The department estimates that the bill will require 11 new positions: 1 Regulation Specialist I in the Bureau of Licensing and Records to implement the new primary source of supply process and to verify manufacturers' affirmations to wholesalers; 4 Tax Auditor I positions in district auditing offices to verify that all products purchased by a wholesale dealer are supplied by a registered primary source of supply and 1 Revenue Specialist I in the central office to process the extended monthly reports; and 5 Special Agent positions to enforce compliance with the bill, 1 in Tampa, 1 in Orlando, 2 in Miami, and 1 in Fort Lauderdale. The department estimates that the expenses related to these positions will be \$671,674 in FY 98-99; \$527,419 in FY 99-00; and \$540,792 in FY 00-01.

The department is unable to determine what effect, positive or negative, the proposed increase in regulation will have on the collection of cigarette excise tax revenues. The increased regulation should result in collection of the tax due on all sales made, but some current sales may be curtailed due to the regulation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
