

By Senator Horne

6-1176-99

See HB 991

1                                   A bill to be entitled  
2           An act relating to tax on tobacco products;  
3           creating s. 210.155, F.S.; defining "primary  
4           source of supply"; requiring registration of  
5           entities acting as a primary source of supply;  
6           prohibiting wholesale dealers from shipping or  
7           accepting delivery of cigarettes from outside  
8           the state other than directly from a primary  
9           source of supply; providing requirements with  
10          respect to affixing any stamp or other cover to  
11          a cigarette package; providing for seizure and  
12          forfeiture of cigarettes in violation, and for  
13          revocation of a wholesale dealer's permit;  
14          amending s. 210.15, F.S.; revising application  
15          requirements for permits for distributing  
16          agents, wholesale dealers, and exporters, and  
17          provisions relating to renewal thereof;  
18          requiring submission of manufacturers'  
19          affirmation forms by distributing agents and  
20          wholesale dealers; amending ss. 210.151 and  
21          210.405, F.S., relating to temporary initial  
22          cigarette and other tobacco products permits;  
23          conforming language; revising provisions  
24          relating to expiration of such permits;  
25          specifying that manufacturers' affirmation  
26          forms must be submitted prior to issuance of a  
27          temporary cigarette permit; amending s. 210.16,  
28          F.S.; providing for revocation and suspension  
29          of registration of a primary source of supply;  
30          providing limitations on renewal of  
31          registration subsequent to revocation;

1 providing for civil penalties in lieu of  
2 revocation or suspension; increasing the civil  
3 penalty that may be imposed on a wholesale  
4 dealer in lieu of suspension or revocation of a  
5 permit; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Section 210.155, Florida Statutes, is  
10 created to read:

11 210.155 Registration as primary source of supply.--

12 (1) DEFINITION.--As used in this section, "primary  
13 source of supply" means the cigarette manufacturer of the  
14 brand, except that, for a cigarette manufacturer outside of  
15 the United States, the primary source of supply may be the  
16 exclusive agent of the manufacturer of the brand, who, if the  
17 brand cannot be secured directly from the manufacturer by an  
18 American wholesale dealer, is the source closest to the  
19 manufacturer in the channel of commerce from whom the brand  
20 can be secured by an American permitholder.

21 (2) TAX CONTROL REGISTRATION REQUIRED.--For purposes  
22 of tax revenue control, beginning on the effective date of  
23 this act, no person, firm, corporation, or other entity that  
24 is a primary source of supply may sell, offer for sale, accept  
25 orders for sale, ship, or cause to be shipped into this state  
26 any cigarettes to any wholesale dealer within the state  
27 without having first registered as a primary source of supply  
28 on forms provided by, and in such manner as prescribed by, the  
29 division. The registration information shall include a listing  
30 of the complete product line of the manufacturer which is  
31 offered in Florida and the domestic plants from which it is

1 shipped, and shall be updated and submitted monthly, together  
2 with a report of all shipments into the state, on forms and in  
3 such manner as prescribed by the division.

4 (3) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS  
5 PROHIBITED.--Beginning on the effective date of this act, no  
6 holder of a wholesale dealer permit may ship or cause to be  
7 shipped into this state, or accept delivery of, from another  
8 state or a foreign country, any cigarettes, except directly  
9 from a primary source of supply, registered as required by  
10 subsection (2), for the brand of cigarettes being shipped.

11 (4) AFFIXING STAMPS; LABELING REQUIREMENTS.--No stamp,  
12 decal, or other cover, including a tax stamp, may be affixed  
13 to or made upon any package of cigarettes that is to be sold  
14 within this state unless that package complies with all  
15 requirements of the Federal Cigarette Labeling and Advertising  
16 Act, 15 U.S.C. ss. 1331-1341, for the placement of labels,  
17 warnings, and other information. No tax stamp may be affixed  
18 to any cigarette package that bears any notice or label  
19 identifying the cigarettes as intended for use outside the  
20 United States or exempt from federal taxes.

21 (5) VIOLATION; SEIZURE; FORFEITURE.--Any cigarettes in  
22 the possession of a wholesale or retail dealer in violation of  
23 this section shall be seized by the division and subject to  
24 forfeiture, and the permit of the wholesale dealer shall be  
25 subject to revocation.

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

29 210.15 Permits.--

30 (1)(a) Every person, firm, or corporation desiring to  
31 deal in cigarettes as a distributing agent, wholesale dealer,

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

1 and shall be signed and sworn to by an officer of the  
2 corporation or principal of the partnership or sole  
3 proprietorship manufacturing the cigarettes. In the case of  
4 cigarettes manufactured outside of the United States, the  
5 affirmation form may be executed by the primary source of  
6 supply registered with the division pursuant to s. 210.155.

7 (b) The holder of any duly issued, annual permit for a  
8 distributing agent shall be entitled to a renewal of his or  
9 her annual permit from year to year ~~as a matter of course~~, on  
10 or before July 1 unless otherwise established by rule, upon  
11 making application to the division, ~~and upon~~ payment of this  
12 annual permit fee, and receipt by the division of newly  
13 executed manufacturer's affirmation forms as required by  
14 paragraph (a).

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

1 division. The cigarette permit for a wholesale dealer or  
2 exporter shall be originally issued at a fee of \$100, which  
3 sum is to cover the cost of the investigation required before  
4 issuing such permit.

5 (f) The cigarette permit for a wholesale dealer or  
6 exporter shall be renewed from year to year ~~as a matter of~~  
7 ~~course,~~ at an annual cost of \$100, on or before July 1 unless  
8 otherwise established by rule, upon making application to the  
9 division, ~~and upon~~ payment of the annual renewal fee, and  
10 receipt by the division of newly executed manufacturer's  
11 affirmation forms as required by paragraph (a).

12 (3) Upon approval of the application, the division  
13 shall ~~grant and~~ issue to each applicant a cigarette permit for  
14 each place of business set forth in the application.  
15 Cigarette permits shall not be assignable and shall be valid  
16 only for the persons in whose names issued and for the  
17 transaction of business at the places designated therein and  
18 shall at all times be conspicuously displayed at the places  
19 for which issued.

20 (4) All permits of distributing agents, wholesale  
21 dealers, or exporters shall remain in force and effect until  
22 July 1 following their issuance unless otherwise established  
23 by rule, or until suspended or revoked for cause by the  
24 division, or surrendered by the permitholder.

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

27 210.151 Initial temporary cigarette ~~and other tobacco~~  
28 ~~products~~ permits.--When a person has filed a completed  
29 application which does not on its face disclose any reason for  
30 denying a cigarette permit under s. 210.15, ~~or other tobacco~~  
31 ~~products permit under s. 210.40,~~ the Division of Alcoholic

1 Beverages and Tobacco of the Department of Business and  
2 Professional Regulation shall issue a temporary initial permit  
3 of the same type and series for which the application has been  
4 submitted, which is valid for all purposes under this part  
5 chapter. The application for a temporary cigarette permit must  
6 be accompanied by the manufacturer's affirmation forms  
7 required by s. 210.15(1)(a) prior to issuance of a temporary  
8 permit.

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

14 (1)(2) A temporary initial permit expires on and may  
15 not be continued or extended beyond the date the division  
16 denies the permit applied for; or beyond 14 days after the  
17 date the division approves the permit applied for; or beyond  
18 the date the applicant pays the permit fee and the division  
19 issues the permit applied for; ~~or beyond the date the~~  
20 ~~temporary permit otherwise expires by law, whichever date~~  
21 occurs first.

22 (2)(3) Each applicant seeking a temporary initial  
23 cigarette permit shall pay to the division for such permit a  
24 fee of \$100. ~~Each applicant seeking a temporary initial permit~~  
25 ~~for other tobacco products shall pay to the division for such~~  
26 ~~permit a fee of \$25.~~

27 (3)(4) Any fee or penalty collected under the  
28 provisions of this act shall be deposited into the Alcoholic  
29 Beverage and Tobacco Trust Fund.

30 Section 4. Section 210.405, Florida Statutes, is  
31 amended to read:

1           210.405 Initial temporary ~~cigarette and other~~ tobacco  
2 products permits.--When a person has filed a completed  
3 application which does not on its face disclose any reason for  
4 denying a ~~cigarette permit under s. 210.15, or other~~ tobacco  
5 products permit under s. 210.40, the Division of Alcoholic  
6 Beverages and Tobacco of the Department of Business and  
7 Professional Regulation shall issue a temporary initial permit  
8 of the same type and series for which the application has been  
9 submitted, which is valid for all purposes under this chapter.

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

15           (1)~~(2)~~ A temporary initial permit expires on ~~and may~~  
16 ~~not be continued or extended beyond~~ the date the division  
17 denies the permit applied for; or beyond 14 days after the  
18 date the division approves the permit applied for; or beyond  
19 the date the applicant pays the permit fee and the division  
20 issues the permit applied for; ~~or beyond the date the~~  
21 ~~temporary permit otherwise expires by law, whichever date~~  
22 occurs first.

23           ~~(2)~~(3) ~~Each applicant seeking a temporary initial~~  
24 ~~cigarette permit shall pay to the division for such permit a~~  
25 ~~fee of \$100.~~Each applicant seeking a temporary initial permit  
26 for ~~other~~ tobacco products shall pay to the division for such  
27 permit a fee of \$25.

28           (3)~~(4)~~ Any fee or penalty collected under the  
29 provisions of this act shall be deposited into the Alcoholic  
30 Beverage and Tobacco Trust Fund.

31



1 Section 5. Section 210.16, Florida Statutes, is  
2 amended to read:

3 210.16 Revocation or suspension of permit or  
4 registration--

5 (1) The Division of Alcoholic Beverages and Tobacco is  
6 given full power and authority to revoke the permit of any  
7 wholesale dealer receiving a permit to engage in business  
8 under this part or the registration of any primary source of  
9 supply for violation of any of the provisions of this part.

10 (2) The division may suspend for a reasonable period  
11 of time, in its discretion, the permit ~~permits~~ of any  
12 wholesale dealer ~~dealers~~ issued under the provisions of this  
13 part or the registration of any primary source of supply for  
14 the same causes and under the same limitations as is  
15 authorized hereunder to revoke the permit ~~permits~~ of such  
16 wholesale dealer or the registration of such primary source of  
17 supply ~~dealers~~.

18 (3) No wholesale dealer whose permit for any place of  
19 business has been revoked shall engage in business under this  
20 part at such place of business after such revocation until a  
21 new permit is issued. No wholesale dealer whose permit for  
22 any place of business has been revoked shall be permitted to  
23 have said permit renewed, or to obtain an additional cigarette  
24 permit for any other place of business, for a period of 6  
25 months after the date such revocation becomes final. No  
26 primary source of supply whose registration has been revoked  
27 shall be permitted to have said registration renewed for a  
28 period of 6 months after the date such revocation becomes  
29 final.

30 (4) In lieu of the suspension or revocation of permits  
31 or registrations, the division may impose civil penalties

1 against holders of permits or registrations for violations of  
2 this part or rules and regulations relating thereto. No civil  
3 penalty so imposed shall exceed \$100,000~~\$1,000~~ for each  
4 offense, and all amounts collected shall be deposited with the  
5 State Treasurer to the credit of the General Revenue Fund. If  
6 the holder of the permit or registration fails to pay the  
7 civil penalty, his or her permit or registration shall be  
8 suspended for such period of time as the division may specify.

9 Section 6. This act shall take effect upon becoming a  
10 law.

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12 HOUSE SUMMARY

13  
14 Requires entities that are the primary source of supply  
15 of cigarettes for wholesale dealers to register with the  
16 Division of Alcoholic Beverages and Tobacco. Provides  
17 that wholesale dealers may not ship or accept delivery of  
18 cigarettes from another state or foreign country except  
19 directly from a primary source of supply. Prohibits  
20 affixing any stamp or other cover to a package of  
21 cigarettes that does not comply with federal labeling  
22 requirements, or affixing any tax stamp to a package that  
23 is identified as intended for use outside the United  
24 States or exempt from federal tax. Provides for  
25 forfeiture of cigarettes in violation and for revocation  
26 of the wholesale dealer's permit. Provides that a primary  
27 source of supply's registration may be revoked or  
28 suspended in the same manner as a wholesale dealer's  
29 permit, and increases the civil penalty that may be  
30 imposed on a wholesale dealer in lieu of permit  
31 suspension or revocation.

24 Revises application requirements for permits for  
25 cigarette distributing agents, wholesale dealers, and  
26 exporters and provisions relating to renewal thereof.  
27 Requires distributing agents and wholesale dealers to  
28 submit manufacturers' affirmation forms prior to  
29 receiving a permit. Revises provisions relating to  
30 expiration of temporary initial cigarette and other  
31 tobacco products permits.