

By the Committee on Regulated Industries and Senator Horne

315-2168-99

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 a limitation on the
10 possession of cigarettes with certain labels;
11 providing that no stamp or other cover may be
12 affixed to a cigarette package that does not
13 meet specified labeling requirements; providing
14 for seizure and forfeiture of cigarettes in
15 violation, and for suspension and revocation of
16 permits; providing application to holders of
17 interim permits; amending s. 210.15, F.S.;
18 revising application requirements for permits
19 for distributing agents, wholesale dealers, and
20 exporters, and provisions relating to renewal
21 thereof; requiring submission of manufacturers'
22 affirmation forms by distributing agents and
23 wholesale dealers; authorizing issuance of
24 interim permits without such affirmation to
25 certain permitholders; amending ss. 210.151,
26 210.405, F.S., relating to temporary initial
27 cigarette and other tobacco products permits;
28 conforming provisions; revising provisions
29 relating to expiration of such permits;
30 specifying that manufacturers' affirmation
31 forms must be submitted prior to issuance of a

1 temporary cigarette permit; amending s. 210.16,
2 F.S.; providing for revocation and suspension
3 of registration of a primary source of supply;
4 providing limitations on renewal of
5 registration subsequent to revocation;
6 providing for civil penalties in lieu of
7 revocation or suspension and amounts thereof
8 for violations of s. 210.155, F.S., by
9 retailers, holders of wholesale permits, and
10 holders of registration as a primary source of
11 supply; specifying status of such fines;
12 providing an effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

16 Section 1. Section 210.155, Florida Statutes, is
17 created to read:

18 210.155 Registration as primary source of supply.--

19 (1) DEFINITION.--As used in this section, "primary
20 source of supply" means the cigarette manufacturer of the
21 brand, except that, for a cigarette manufacturer outside of
22 the United States, the primary source of supply may be the
23 exclusive agent of the manufacturer of the brand, who, if the
24 brand cannot be secured directly from the manufacturer by an
25 American wholesale dealer, is the source closest to the
26 manufacturer in the channel of commerce from whom the brand
27 can be secured by an American permitholder.

28 (2) TAX CONTROL REGISTRATION REQUIRED.--For purposes
29 of tax revenue control, beginning on the effective date of
30 this act, no person, firm, corporation, or other entity that
31 is a primary source of supply may sell, offer for sale, accept

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

13 (3) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS
14 PROHIBITED; LIMITATION ON POSSESSION.--

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

24 (b) This subsection does not apply to the holder of an
25 interim permit issued pursuant to s. 210.15(1)(b) until
26 January 1, 2000.

27 (4) AFFIXING STAMPS; LABELING REQUIREMENTS.--No stamp,
28 decal, or other cover, including a tax stamp, may be affixed
29 to or made upon any package of cigarettes which is to be sold
30 within this state, except by the holder of an interim
31 wholesale dealer permit, unless that package complies with all

1 requirements of the Federal Cigarette Labeling and Advertising
2 Act for the placement of labels, warnings, and other
3 information. The placement of a tax stamp on any cigarette
4 package does not authorize or affect acts which are otherwise
5 prohibited by this part.

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

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

25 210.15 Permits.--

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

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

1 affirmation form may be executed by the primary source of
2 supply registered with the division pursuant to s. 210.155.

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

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

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

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

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

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

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

3 210.151 Initial temporary cigarette ~~and other tobacco~~
4 ~~products~~ permits.--When a person has filed a completed
5 application which does not on its face disclose any reason for
6 denying a cigarette permit under s. 210.15, ~~or other tobacco~~
7 ~~products permit under s. 210.40~~, the Division of Alcoholic
8 Beverages and Tobacco of the Department of Business and
9 Professional Regulation shall issue a temporary initial permit
10 of the same type and series for which the application has been
11 submitted, which is valid for all purposes under this part
12 ~~chapter~~. The application for a temporary cigarette permit must
13 be accompanied by the manufacturer's affirmation forms
14 required by s. 210.15(1)(a) before issuance of a temporary
15 permit.

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

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

28 (2)(3) Each applicant seeking a temporary initial
29 cigarette permit shall pay to the division for such permit a
30 fee of \$100. ~~Each applicant seeking a temporary initial permit~~
31

1 ~~for other tobacco products shall pay to the division for such~~
2 ~~permit a fee of \$25.~~

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

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

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

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; ~~beyond~~ 14 days after the date
25 the division approves the permit applied for; or beyond the
26 date the applicant pays the permit fee and the division issues
27 the permit applied for; ~~or beyond the date the temporary~~
28 ~~permit otherwise expires by law, whichever date occurs first.~~

29 (2)~~(3)~~ Each applicant seeking a temporary initial
30 cigarette permit shall pay to the division for such permit a
31 ~~fee of \$100.~~ Each applicant seeking a temporary initial permit

1 for ~~other~~ tobacco products shall pay to the division for such
2 permit a fee of \$25.

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

6 Section 5. Section 210.16, Florida Statutes, is
7 amended to read:

8 210.16 Revocation or suspension of permit or
9 registration.--

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

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

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

1 primary source of supply whose registration has been revoked
2 shall be permitted to have said registration renewed for a
3 period of 6 months after the date such revocation becomes
4 final.

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

28 Section 6. This act shall take effect upon becoming a
29 law.
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31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2248
4 Provides that cigarettes that previously were exported and
5 later returned to a cigarette manufacturer or a bonded
6 warehouse in the United States are exempt from the provisions
7 of the act.
8
9 Allows a holder of an interim wholesale dealer permit to affix
10 stamps to packages of cigarettes when those packages do not
11 comply with all requirements of the Federal Cigarette Labeling
12 and Advertising Act.
13
14 Provides that any cigarettes which are in violation of this
15 section and are in the possession of a retail dealer on or
16 after March 1, 2000, are subject to seizure and forfeiture,
17 with the retail dealer's permit subject to suspension for the
18 first violation and to revocation for a subsequent offense,
19 except that the holder of an interim permit may possess
20 cigarettes brought into this state prior to January 1, 2000,
21 for a period of 30 days after the expiration of the permit if
22 the cigarettes are not affixed with the required Florida
23 excise tax stamps.
24
25 Provides that the holder of a distributing agent, wholesale
26 dealer, or exporter permit which was issued prior to July 1,
27 1997, and continuously kept in effect since issuance through
28 March 1, 1999, shall be issued an interim permit which is
29 valid until March 1, 2000, without a manufacturer's
30 affirmation, if such holder is otherwise in compliance with
31 the permitting section.
Provides maximum amount of civil penalties for violation of
primary source of supply statute.