

By Representative Albright

1 A bill to be entitled
2 An act relating to tax on tobacco products;
3 amending s. 210.01, F.S.; defining the terms
4 "importer" and "primary source of supply";
5 amending s. 210.05, F.S.; providing
6 requirements with respect to stamps prescribed
7 by the Division of Alcoholic Beverages and
8 Tobacco; creating s. 210.155, F.S.; 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 requirements with respect to affixing
15 any stamp or other cover to a cigarette
16 package; providing for seizure and forfeiture
17 of cigarettes in violation and for revocation
18 of a wholesale dealer's permit; amending s.
19 210.15, F.S.; revising application requirements
20 for permits for distributing agents, wholesale
21 dealers, and exporters, and provisions relating
22 to renewal thereof; requiring submission of
23 manufacturers' affirmation forms by
24 distributing agents and wholesale dealers;
25 amending ss. 210.151 and 210.405, F.S.,
26 relating to temporary initial cigarette and
27 other tobacco products permits; conforming
28 language; revising provisions relating to
29 expiration of such permits; specifying that
30 manufacturers' affirmation forms must be
31 submitted prior to issuance of a temporary

1 cigarette permit; amending s. 210.16, F.S.;
2 providing for revocation and suspension of
3 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; increasing the civil
8 penalty that may be imposed on a wholesale
9 dealer in lieu of suspension or revocation of a
10 permit; amending s. 210.19, F.S.; directing the
11 division to keep certain records; providing
12 severability; providing an effective date.
13

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

15
16 Section 1. Subsections (19) and (20) are added to
17 section 210.01, Florida Statutes, to read:

18 210.01 Definitions.--When used in this part the
19 following words shall have the meaning herein indicated:

20 (19) "Importer" means importer as that term is defined
21 in 26 U.S.C. s. 5702(1).

22 (20) "Primary source of supply" means:

23 (a) In the case of cigarettes manufactured in the
24 United States, the manufacturer of the cigarettes.

25 (b) In the case of cigarettes not manufactured in the
26 United States:

27 1. The manufacturer of the cigarettes; or

28 2. Any other person that imports such cigarettes into
29 the United States.
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1 Cigarettes are "manufactured in the United States" for
2 purposes of this definition if they are manufactured in any
3 state, the District of Columbia, the Commonwealth of Puerto
4 Rico, or any other territory or possession of the United
5 States, or on any Indian lands located within the geographical
6 boundaries of the United States.

7 Section 2. Subsection (2) of section 210.05, Florida
8 Statutes, is amended to read:

9 210.05 Preparation and sale of stamps; discount.--

10 (2) The division shall prescribe, prepare, and furnish
11 stamps of such denominations and quantities as may be
12 necessary for the payment of the tax imposed by this part, and
13 may from time to time and as often as it deems advisable
14 provide for the issuance and exclusive use of stamps of a new
15 design and forbid the use of stamps of any other design.
16 However, all stamps prescribed by the division must be
17 designed and furnished in a fashion that permits
18 identification of the agent or wholesale dealer that affixed
19 the stamp to the particular package of cigarettes by means of
20 a serial number or other mark on the stamp.The division shall
21 make provisions for the sale of such stamps at such places and
22 at such time as it may deem necessary.

23 Section 3. Section 210.155, Florida Statutes, is
24 created to read:

25 210.155 Primary source of supply; tax control
26 registration; prohibitions; reports by agents and wholesale
27 dealers; enforcement.--

28 (1) PRIMARY SOURCE OF SUPPLY; TAX CONTROL
29 REGISTRATION.--

30 (a) For purposes of revenue control, beginning on the
31 effective date of this section, no person shall sell, offer

1 for sale, or accept orders for sale, to any person in this
2 state, or ship, or cause to be shipped, into this state, for
3 sale to any person in this state, any cigarettes, unless such
4 person:

5 1. Is a primary source of supply; or
6 2. Has acquired such cigarettes directly from a
7 primary source of supply; provided, that no primary source of
8 supply shall sell, offer for sale, or accept orders for sale,
9 to any person in this state, or ship, or cause to be shipped,
10 into this state, for sale to any person in this state, any
11 cigarettes, without first having registered as the primary
12 source of supply of such cigarettes on forms provided by, and
13 on such a date and in such manner as prescribed by, the
14 division.

15 (b) Each primary source of supply registering under
16 this section shall, on the form provided by the division:

17 1. List all cigarettes by brand style that the primary
18 source of supply sells, offers for sale, or for which the
19 primary source of supply accepts orders for sale, to any
20 person in this state, or ships, or causes to be shipped, into
21 this state for sale to any person in this state.

22 2. Identify the manufacturer of such cigarettes and
23 the place where such cigarettes were manufactured.

24
25 Each primary source of supply shall file with the division
26 monthly updates of this information, together with a monthly
27 report of all shipments into the state, on forms provided by,
28 and on such date and in such manner as prescribed by, the
29 division.

30 (c) Each primary source of supply shall supply such
31 documentation supporting its application for registration and

1 monthly reports as the division may require. The division may
2 deny, suspend, or revoke the registration of any primary
3 source of supply for failure to provide the required
4 information or documentation sufficient to support the
5 application of the primary source of supply for registration
6 or one or more monthly reports.
7 (2) PROHIBITIONS.--No person shall:
8 (a) Sell or distribute in this state; acquire, hold
9 own, possess, or transport, for sale or distribution in this
10 state; or import, or cause to imported, into this state for
11 sale or distribution in this state:
12 1. Any cigarettes the package of which:
13 a. Bears any statement, label, stamp, sticker, or
14 notice indicating that the manufacturer did not intend the
15 cigarettes to be sold, distributed, or used in the United
16 States, including, but not limited to, labels stating "For
17 export only," "U.S. tax-exempt," "For use outside U.S.," or
18 similar wording; or
19 b. Does not comply with:
20 (I) All requirements imposed by or pursuant to federal
21 law regarding warnings or other information on packages of
22 cigarettes manufactured, packaged, or imported for sale,
23 distribution, or use in the United States, including, but not
24 limited to, the precise warning labels specified in the
25 federal Cigarette Labeling and Advertising Act, 15 U.S.C. s.
26 1333.
27 (II) All federal trademark and copyright laws;
28 2. Any cigarettes imported into the United States in
29 violation of 26 U.S.C. s. 5754 or any other federal law, or
30 implementing federal regulations;
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1 3. Any cigarettes that such person otherwise knows or
2 has reason to know the manufacturer did not intend to be sold,
3 distributed, or used in the United States; or
4 4. Any cigarettes for which there has not been
5 submitted to the Secretary of the United States Department of
6 Health and Human Services the list of the ingredients added to
7 tobacco in the manufacture of such cigarettes required by the
8 federal Cigarette Labeling and Advertising Act, 15 U.S.C. s.
9 1335(a);
10 (b) Alter the package of any cigarettes, prior to
11 distribution to the ultimate consumer, so as to remove,
12 conceal, or obscure:
13 1. Any statement, label, stamp, sticker, or notice
14 described in (2)a.1.; or
15 2. Any health warning that is not specified in, or
16 does not conform with the requirements of, the federal
17 Cigarette Labeling and Advertising Act, 15 U.S.C. s. 1333; or
18 (c) Affix any stamp required pursuant to this part to
19 the package of any cigarettes described in paragraph (a) or
20 altered in violation of paragraph (b).
21 (3) REPORTS BY AGENTS AND WHOLESALE DEALERS.--Each
22 agent and wholesale dealer shall file monthly with the
23 division, in accordance with s. 210.09, for all cigarettes
24 imported into the United States to which an agent or
25 wholesaler dealer has affixed a stamp pursuant to this chapter
26 in the preceding month:
27 (a) A copy of:
28 1. The permit issued pursuant to the Internal Revenue
29 Code, 26 U.S.C. s. 5713, to the person importing such
30 cigarettes into the United States allowing such person to
31 import such cigarettes.

1 2. The customs form containing, with respect to such
2 cigarettes, the internal revenue tax information required by
3 the Federal Bureau of Alcohol, Tobacco and Firearms.

4 (b) A statement, signed by such person under penalty
5 of perjury, which shall be treated as confidential by the
6 commissioner and exempt from disclosure under chapter 119,
7 identifying the brand and brand styles of all such cigarettes,
8 the quantity of each brand style of such cigarettes, the
9 supplier of such cigarettes, and the person or persons, if
10 any, to whom the cigarettes have been conveyed for resale, and
11 a separate statement, signed by such individual under penalty
12 of perjury, which shall not be treated as confidential or
13 exempt from disclosure, separately identifying the brands and
14 brand styles of such cigarettes.

15 (c) A statement, signed by an officer of the
16 manufacturer or importer under penalty of perjury, certifying
17 that the manufacturer or importer has complied with the
18 package health warning and ingredient reporting requirements
19 of the federal Cigarette Labeling and Advertising Act, 15
20 U.S.C. s. 1333 and 1335(a), with respect to such cigarettes.

21 (4) CRIMINAL PENALTIES.--Any person that commits any
22 of the acts prohibited by subsection (1) or subsection (2),
23 either knowing or having reason to know he or she is doing so,
24 or that fails to comply with any of the requirements of
25 subsection (1) or subsection (3), commits a felony of the
26 third degree, punishable by a fine of not more than \$5,000 or
27 imprisonment of not more than 5 years, or both.

28 (5) ADMINISTRATIVE SANCTIONS.--

29 (a) Upon finding a violation of this section by the
30 holder of any permit issued under this part or chapter 569, or
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1 any implementing rule promulgated by the division, the
2 division may:

3 1. Revoke or suspend the permit or permits issued to
4 such permittee pursuant to the procedures set forth in this
5 part or chapter 569, as applicable; and

6 2. Impose on the holder of such a permit a civil
7 penalty in an amount not to exceed the greater of 500 percent
8 of the retail value of the cigarettes involved or \$5,000.

9 (b) Cigarettes that are acquired, held, owned,
10 possessed, transported in, imported into, or sold or
11 distributed in this state in violation of this section shall
12 be deemed contraband under s. 210.12 and shall be seized by
13 the division subject to forfeiture as provided therein, and
14 all such cigarettes so seized and forfeited shall be
15 destroyed. Such cigarettes shall be deemed contraband whether
16 the violation of this section is knowing or otherwise.

17 (6) UNFAIR TRADE PRACTICES.--A violation of this
18 section shall constitute an unlawful trade practice as
19 provided in s. 501.204(1) and, in addition to any remedies or
20 penalties available set forth in this section, shall be
21 subject to any remedies or penalties available for a violation
22 of that section.

23 (7) GENERAL PROVISIONS.--

24 (a) This section shall be enforced by the division;
25 provided, that at the request of the division or the
26 division's duly authorized agent, the state police and all
27 local police authorities shall enforce the provisions of this
28 section. The Attorney General has concurrent power with the
29 prosecuting attorneys of the state to enforce this section.

30 (b) For the purpose of enforcing this section, the
31 division and any agency to which the division shall have

1 delegated enforcement responsibility pursuant to paragraph (a)
2 may request information from any state or local agency, and
3 may share information with or request information from, any
4 federal agency and any agency of any other state or any local
5 agency thereof.

6 (c) In addition to any other remedy provided by law,
7 including enforcement as provided in paragraph (a), any person
8 may bring an action for appropriate injunctive or other
9 equitable relief for a violation of this section; actual
10 damages, if any, sustained by reason of the violation; and, as
11 determined by the court, interest on the damages from the date
12 of the complaint, taxable costs, and reasonable attorney's
13 fees. If the trier of fact finds that the violation is
14 egregious, it may increase recovery to an amount not in excess
15 of three times the actual damages sustained by reason of the
16 violation.

17 (8) APPLICABILITY.--

18 (a) This section does not apply to:

19 1. Cigarettes allowed to be imported or brought into
20 the United States for personal use; and

21 2. Cigarettes sold or intended to be sold as duty-free
22 merchandise by a duty-free sales enterprise in accordance with
23 the provisions of 19 U.S.C. s. 1555(b) and any implementing
24 regulations, provided, however that this section shall apply
25 to any such cigarettes that are brought back into the customs
26 territory for resale within the customs territory.

27 (b) The penalties provided in this section are in
28 addition to any other penalties imposed under other law.

29 Section 4. Paragraphs (a), (b), (e), and (f) of
30 subsection (1) and subsections (3) and (4) of section 210.15,
31 Florida Statutes, are amended to read:

1 210.15 Permits.--
2 (1)(a) Every person, firm, or corporation desiring to
3 deal in cigarettes as a distributing agent, wholesale dealer,
4 or exporter within this state shall file an application for a
5 cigarette permit for each place of business with the Division
6 of Alcoholic Beverages and Tobacco. Every application for a
7 cigarette permit shall be made on forms furnished by the
8 division and shall set forth the name under which the
9 applicant transacts or intends to transact business, the
10 location of the applicant's place of business within the
11 state, and such other information as the division may require.
12 If the applicant has or intends to have more than one place of
13 business dealing in cigarettes within this state, the
14 application shall state the location of each place of
15 business. If the applicant is an association, the application
16 shall set forth the names and addresses of the persons
17 constituting the association, and if a corporation, the names
18 and addresses of the principal officers thereof and any other
19 information prescribed by the division for the purpose of
20 identification. The application shall be signed and verified
21 by oath or affirmation by the owner, if a natural person, and
22 in the case of an association or partnership, any partner
23 ~~members or partners~~ thereof, and in the case of a corporation,
24 by an executive officer thereof or by any person specifically
25 authorized by the corporation to sign the application, to
26 which shall be attached the written evidence of this
27 authority. The cigarette permit for a distributing agent
28 shall be issued annually for which an annual fee of \$5 shall
29 be charged. No permit for a distributing agent or wholesale
30 dealer shall be issued prior to receipt of an affirmation, on
31 a form approved by the division, from each primary source of

1 supply registered with the division under s. 210.155 whose
2 cigarettes the distributing agent or wholesale dealer intends
3 to stamp or distribute. Such affirmation shall evidence the
4 intent of the primary source of supply to provide such
5 cigarettes to the applicant and shall be signed and sworn by
6 an officer of the corporation, in the case of a primary source
7 of supply that is a corporation, or a principal of the
8 partnership or a sole proprietorship, in the case of a primary
9 source of supply that is a partnership or a sole
10 proprietorship.

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

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

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

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

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

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

28 Section 5. Section 210.151, Florida Statutes, is
29 amended to read:

30 210.151 Initial temporary cigarette ~~and other tobacco~~
31 ~~products~~ permits.--When a person has filed a completed

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

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

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

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

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

1 Section 6. Section 210.19, Florida Statutes, is
2 amended to read:

3 210.19 Records to be kept by division.--The division
4 shall keep records showing the total amount of taxes
5 collected, which records shall be open to the public during
6 the regular office hours of the division. The division shall
7 maintain records that identify which agent or wholesale dealer
8 affixed the tax stamp to each package of cigarettes. The
9 identifying records must be made available for public
10 inspection and retained for at least 3 years.

11 Section 7. Section 210.405, Florida Statutes, is
12 amended to read:

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

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

27 (1)(2) A temporary initial permit expires on ~~and may~~
28 ~~not be continued or extended beyond~~ the date the division
29 denies the permit applied for; or beyond 14 days after the
30 date the division approves the permit applied for; or beyond
31 the date the applicant pays the permit fee and the division

1 issues the permit applied for; ~~or beyond the date the~~
2 ~~temporary permit otherwise expires by law~~, whichever date
3 occurs first.

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

9 ~~(3)(4)~~ Any fee or penalty collected under the
10 provisions of this act shall be deposited into the Alcoholic
11 Beverage and Tobacco Trust Fund.

12 Section 8. Section 210.16, Florida Statutes, is
13 amended to read:

14 210.16 Revocation or suspension of permit or
15 registration.--

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

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

29 (3) No wholesale dealer whose permit for any place of
30 business has been revoked shall engage in business under this
31 part at such place of business after such revocation until a

1 new permit is issued. No wholesale dealer whose permit for
2 any place of business has been revoked shall be permitted to
3 have said permit renewed, or to obtain an additional cigarette
4 permit for any other place of business, for a period of 6
5 months after the date such revocation becomes final. No
6 primary source of supply whose registration has been revoked
7 shall be permitted to have said registration renewed for a
8 period of 6 months after the date such revocation becomes
9 final.

10 (4) In lieu of the suspension or revocation of permits
11 or registrations, the division may impose civil penalties
12 against holders of permits or registrations for violations of
13 this part or rules and regulations relating thereto. No civil
14 penalty so imposed shall exceed \$100,000 ~~\$1,000~~ for each
15 offense, and all amounts collected shall be deposited with the
16 State Treasurer to the credit of the General Revenue Fund. If
17 the holder of the permit or registration fails to pay the
18 civil penalty, his or her permit or registration shall be
19 suspended for such period of time as the division may specify.

20 Section 9. If any provision of this act or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or
23 applications of the act which can be given effect without the
24 invalid provision or application, and to this end the
25 provisions of this act are declared severable.

26 Section 10. This act shall take effect upon becoming a
27 law.

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HOUSE SUMMARY

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

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