

By Representatives Henriquez, Ross, Seiler, Mayfield,  
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1                                   A bill to be entitled  
2           An act relating to the Florida Cigarette  
3           Anti-Conduit Act; creating pt. III of ch. 210,  
4           F.S.; providing a short title; providing  
5           findings and purposes; providing definitions;  
6           prohibiting shipment and sale of certain  
7           cigarettes; requiring the Division of Alcoholic  
8           Beverages and Tobacco of the Department of  
9           Business and Professional Regulation to prepare  
10          a list of cigarettes approved for shipment and  
11          sale; providing criteria and requirements for  
12          such list; requiring certain cigarette  
13          manufacturers to provide to the division  
14          certain certifications; providing for a  
15          determination of compliance; providing  
16          construction; requiring permitholders to report  
17          certain information to the division; providing  
18          for administrative penalties; providing for  
19          injunctive relief; providing for bringing  
20          actions against certain manufacturers for  
21          certain violations; providing for appellate  
22          court review of certain actions of the  
23          division; providing for stays of actions of the  
24          divisions under certain circumstances;  
25          authorizing the division to revise certain  
26          lists for certain purposes; authorizing the  
27          division and the Attorney General to share  
28          certain information; authorizing the division  
29          and the Attorney General to conduct certain  
30          audits; prohibiting issuance of certain permits  
31          under certain circumstances; specifying due

1           dates for certain reports, submissions, and  
2           transmissions required under the act; providing  
3           an effective date.

4  
5 Be It Enacted by the Legislature of the State of Florida:

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7           Section 1. Part III of chapter 210, Florida Statutes,  
8           consisting of sections 210.81, 210.82, 210.83, 210.84, 210.85,  
9           210.86, 210.87, 210.88, 210.89, 210.90, 210.91, and 210.92,  
10          Florida Statutes, is created to read:

11           210.81 Short title.--This part may be cited as "The  
12 Cigarette Anti-Conduit Act."

13           210.82 Findings and purposes.--

14           (1) It is the policy of this state to reduce cigarette  
15 smoking by minors and adults who are residents of this state.  
16 According to public health authorities, higher cigarette  
17 prices help reduce cigarette consumption.

18           (2) In 1997 and 1998, leading United States cigarette  
19 manufacturers entered into settlement agreements with this  
20 state and other states and territories, resolving various  
21 lawsuits brought by those states and territories against those  
22 manufacturers.

23           (3) Under the settlement agreement with this state  
24 dated August 25, 1997, defined in s. 215.56005 as the tobacco  
25 settlement agreement, leading cigarette manufacturers agreed  
26 to make annual payments to the state. These payments are tied  
27 to each such manufacturer's share of cigarette sales for  
28 consumption in the United States. If the national market  
29 share of any of these manufacturers declines, its payments to  
30 this state under the tobacco settlement agreement decline.

31

1       (4) Under the settlement agreement with these  
2 cigarette manufacturers and others dated November 23, 1998,  
3 known as the Master Settlement Agreement, 46 states and 6  
4 territories have enacted a law, known as the MSA statute,  
5 which requires tobacco product manufacturers to:

6           (a) Sign the Master Settlement Agreement and thereby  
7 become participating manufacturers responsible for making  
8 settlement payments as specified in the Master Settlement  
9 Agreement; or

10          (b) Remain nonparticipating manufacturers and thereby  
11 become responsible for making specified payments into escrow  
12 accounts for sales of their cigarettes to consumers in those  
13 states and territories.

14       (5) The Master Settlement Agreement and the MSA  
15 statutes enacted by MSA states directly benefit the people of  
16 this state in the following ways:

17           (a) By requiring each tobacco product manufacturer to  
18 make either settlement payments or escrow payments, as the  
19 case may be, they ensure higher prices for cigarettes, which  
20 public health authorities believe help reduce cigarette  
21 consumption.

22           (b) By requiring nonparticipating manufacturers to  
23 make escrow payments, the MSA statutes directly protect the  
24 payments this state receives under the tobacco settlement  
25 agreement by preventing nonparticipating manufacturers from  
26 using their cost advantage vis-a-vis the participating  
27 manufacturers as a result of the Master Settlement Agreement  
28 to siphon sales from such manufacturers.

29       (6) Some nonparticipating manufacturers are  
30 circumventing or may attempt to circumvent the escrow payment  
31 requirements of the MSA statutes enacted by MSA states by

1 using this state as a conduit, selling their cigarettes to  
2 distributors in this state for transshipment to states and  
3 territories covered by the Master Settlement Agreement and  
4 then claiming that the MSA statutes do not require them to  
5 make escrow payments for sales of the transhipped cigarettes  
6 in those states and territories. As a result of such  
7 circumvention, the prices of cigarettes of such  
8 nonparticipating manufacturers in this state do not reflect  
9 the escrow payments required by the MSA statutes enacted by  
10 the MSA states.

11 (7) Such circumvention undermines the policy of this  
12 state to reduce smoking by the residents of this state by  
13 enabling such nonparticipating manufacturers to offer  
14 significantly lower prices than the tobacco product  
15 manufacturers that must make annual settlement payments under  
16 the Master Settlement Agreement and the nonparticipating  
17 manufacturers that make such escrow payments. It also  
18 threatens the payments that are due this state under the  
19 tobacco settlement agreement by siphoning sales from the  
20 manufacturers whose payments to this state are tied to their  
21 national market share. Finally, the use of this state as a  
22 conduit to circumvent the laws of other states is generally  
23 contrary to the public policy of this state.

24 (8) Prohibiting the shipment or sale of cigarettes of  
25 a nonparticipating manufacturer that has not made all escrow  
26 payments required by the MSA statutes of the MSA states will  
27 help ensure that the nonparticipating manufacturer will make  
28 such payments, thereby serving this state's policies of:

29 (a) Reducing smoking by its residents.

30 (b) Protecting payments to this state under the  
31 tobacco settlement agreement.

1       (c) Avoiding the use of this state as a conduit to  
2 circumvent the laws of other states and territories.

3           210.83 Definitions.--As used in this part:

4           (1) "Brand family" means all styles of cigarettes sold  
5 under the same trademark and differentiated from one another  
6 by means of additional modifiers, including, but not limited  
7 to, "menthol," "lights," "kings," and "100s."

8           (2) "Cigarette" means any product that contains  
9 nicotine, is intended to be burned or heated under ordinary  
10 conditions of use, and consists of or contains:

11           (a) Any roll of tobacco wrapped in paper or in any  
12 substance not containing tobacco;

13           (b) Tobacco, in any form, that is functional in the  
14 product, which, because of its appearance, the type of tobacco  
15 used in the filler, or its packaging and labeling, is likely  
16 to be offered to, or purchased by, consumers as a cigarette;  
17 or

18           (c) Any roll of tobacco wrapped in any substance  
19 containing tobacco which, because of its appearance, the type  
20 of tobacco used in the filler, or its packaging and labeling,  
21 is likely to be offered to, or purchased by, consumers as a  
22 cigarette described in paragraph (a). The term "cigarette"  
23 includes "roll-your-own," meaning any tobacco which, because  
24 of its appearance, type, packaging, or labeling, is suitable  
25 for use and likely to be offered to, or purchased by,  
26 consumers as tobacco for making cigarettes. For purposes of  
27 this definition of "cigarette," 0.09 ounces of "roll-your-own"  
28 tobacco shall constitute one individual "cigarette."

29           (3) "Division" means the Division of Alcoholic  
30 Beverages and Tobacco of the Department of Business and  
31 Professional Regulation.

1           (4) "Master Settlement Agreement" means the settlement  
2 agreement and related documents entered into on November 23,  
3 1998, by the MSA states and certain tobacco product  
4 manufacturers, and subsequently entered into by certain other  
5 tobacco product manufacturers.

6           (5) "MSA state" means a settling state as defined in  
7 section II(qq) of the Master Settlement Agreement.

8           (6) "MSA statute" means the law enacted by an MSA  
9 state to implement Exhibit T to the Master Settlement  
10 Agreement.

11           (7) "Nonparticipating manufacturer" means any tobacco  
12 product manufacturer that is not a participating manufacturer,  
13 as defined in subsection (8).

14           (8) "Participating manufacturer" means a participating  
15 manufacturer as that term is defined in section II(jj) of the  
16 Master Settlement Agreement and any amendments to such  
17 section.

18           (9) "Permitholder" means a person who holds a permit  
19 as a wholesale dealer or exporter under Part I or as a  
20 distributor under Part II.

21           (10) "State" means any state or territory of the  
22 United States.

23           (11) "Tobacco product manufacturer" means a tobacco  
24 product manufacturer as that term is defined in section II(uu)  
25 of the Master Settlement Agreement.

26           210.84 Prohibition against shipment and sale of  
27 certain cigarettes.--It is unlawful for a permitholder to  
28 ship, sell, or possess for sale or resale to any person in  
29 this state or another state cigarettes belonging to a brand  
30 family not included on the list provided by the division to  
31 the permitholder under s. 210.85.

1           210.85 List of cigarettes approved for shipment and  
2 sale.--The division shall annually prepare, and not later than  
3 July 15 of each year shall transmit to all permitholders and  
4 post on the website of the division, a list of all brand  
5 families manufactured for sale to consumers within the United  
6 States by:

7           (1) Each tobacco product manufacturer that by May 1 of  
8 such year has provided the division the certification and  
9 information specified in s. 210.86(1).

10           (2) Each tobacco product manufacturer as to which the  
11 division has made the determination described in s. 210.87(2).

12           210.86 Inclusion on list.--

13           (1) PARTICIPATING MANUFACTURERS.--The division shall  
14 include on the list described in s. 210.85 all brand families  
15 manufactured for sale to consumers within the United States by  
16 each tobacco product manufacturer that has provided to the  
17 division, not later than May 1 of the year in question or  
18 previously, a certification, under penalty of perjury, that  
19 such manufacturer is a participating manufacturer and the  
20 names of all such brand families. Such a tobacco product  
21 manufacturer shall be deemed to be the manufacturer of all  
22 those cigarettes, but only those cigarettes, that are counted  
23 as its cigarettes for purposes of calculating its payments  
24 under the Master Settlement Agreement for the year in  
25 question.

26           (2) NONPARTICIPATING MANUFACTURERS.--The division  
27 shall include on the list described in s. 210.85 all brand  
28 families manufactured for sale to consumers within the United  
29 States by each nonparticipating manufacturer that has provided  
30 the division, not later than May 1 of the year in question,  
31 the certification described in s. 210.87, but only if the

1 division has determined that such certification is true and  
2 correct, and the names of all such brand families. A  
3 nonparticipating manufacturer shall be deemed to be the  
4 manufacturer of all cigarettes as to which it is the first  
5 purchaser anywhere for resale in the United States of  
6 cigarettes manufactured anywhere that the manufacturer of such  
7 cigarettes did not intend to be sold in the United States.  
8 210.87 Determination by division.--  
9 (1) CERTIFICATION BY NONPARTICIPATING  
10 MANUFACTURER.--For the brand families of a nonparticipating  
11 manufacturer that sells, whether directly or through a  
12 distributor or similar intermediary or intermediaries,  
13 cigarettes to any permitholder to be eligible for inclusion in  
14 the list described in s. 210.85, such manufacturer, not later  
15 than May 1 of the year in question, under penalty of perjury,  
16 shall provide to the division:  
17 (a) A certification that such manufacturer:  
18 1. Will make all escrow payments required by the MSA  
19 statute of each MSA state for all cigarettes of such  
20 nonparticipating manufacturer that shall be sold to consumers  
21 within each such MSA state through April 30 of the year  
22 following the year in which such certification is provided.  
23 2. Has made all escrow payments required by the MSA  
24 statute of each MSA state for cigarettes of such  
25 nonparticipating manufacturer that were sold to consumers  
26 within each such MSA state during the preceding calendar year.  
27 (b) Such information as the division shall require to  
28 determine whether such certification is true and correct.  
29 (2) DETERMINATION OF COMPLIANCE.--A nonparticipating  
30 manufacturer shall be determined to have made a true and  
31 correct certification under subsection (1) if the division



1 determines that the total amount of the escrow payments made  
2 by the nonparticipating manufacturer in all MSA states for  
3 cigarettes of the nonparticipating manufacturer that were sold  
4 to consumers within all such states during the preceding year  
5 is equal to the product of:  
6 (a) The applicable per-unit amount specified in the  
7 MSA statutes of such states, including all adjustments for  
8 inflation; and  
9 (b) The number of units of cigarettes manufactured by  
10 the nonparticipating manufacturer that were sold to consumers  
11 within all MSA states during the preceding year,  
12  
13 provided, the division may determine that a nonparticipating  
14 manufacturer has made a true and correct certification under  
15 subsection (1) if the nonparticipating manufacturer  
16 demonstrates that the MSA statutes of all MSA states required  
17 the nonparticipating manufacturer to make total payments for  
18 the preceding year in some other amount and such manufacturer  
19 has made such payments.  
20 (3) NOTICE OF DETERMINATION.--The division shall  
21 promptly notify the nonparticipating manufacturer and the  
22 Attorney General of any determination made under this section.  
23 (4) DEFINITION.--For purposes of this section,  
24 references to cigarettes sold to consumers within a state  
25 include any cigarettes sold to consumers within the state,  
26 whether sold by the manufacturer directly or by a distributor,  
27 retailer, or similar intermediary or intermediaries.  
28 210.88 Reports by permitholders.--Not later than 30  
29 days after the end of each quarter, and more frequently if  
30 required by the division, each permitholder shall report to  
31 the division all shipments of cigarettes to persons in this

1 state and other states during the preceding calendar quarter.  
2 The report shall state, by nonparticipating manufacturer and  
3 brand family, the quantity of cigarettes shipped to persons in  
4 each such state.

5 210.89 Administrative penalties and injunctive  
6 relief.--

7 (1) PENALTIES.--Upon a finding by the division that a  
8 permitholder has violated s. 210.84, the division may impose  
9 upon the permitholder a civil penalty in an amount not to  
10 exceed the greater of 500 percent of the retail value of the  
11 cigarettes shipped in violation of s. 210.84 or \$5,000. Upon  
12 a finding by the division that a permitholder has violated s.  
13 210.88, the division may impose upon the permitholder a  
14 penalty in an amount not to exceed \$5,000. Upon a finding of  
15 a second or subsequent violation by a permitholder of s.  
16 210.84 or s. 210.88, the division may suspend or revoke the  
17 license of the permitholder.

18 (2) INJUNCTIONS.--The Attorney General, on behalf of  
19 the division, shall seek an injunction to restrain a  
20 permitholder from shipping cigarettes in violation of s.  
21 210.84 or to compel a permitholder to submit the information  
22 required by s. 210.88.

23 (3) ACTIONS AGAINST NONCOMPLIANT MANUFACTURERS.--Based  
24 on credible information provided by authorities in an MSA  
25 state or other credible information, the Attorney General  
26 shall bring an action in the Circuit Court of Leon County  
27 against a nonparticipating manufacturer for filing a false  
28 certification in violation of s. 210.87. Upon a finding that  
29 the nonparticipating manufacturer has filed a false  
30 certification under s. 210.87(1)(a)2. or has fraudulently or  
31 intentionally filed a false certification under s.

1 210.87(1)(a)1., the court shall issue a permanent injunction  
2 prohibiting the nonparticipating manufacturer from selling  
3 cigarettes, directly or through a distributor or other  
4 intermediary or intermediaries, to permitholders and consumers  
5 within the state for a period not to exceed 2 years.

6 210.90 Review of division's determination.--If the  
7 division determines to exclude or remove from the list  
8 described in s. 210.85 the brand families of a  
9 nonparticipating manufacturer that timely submitted to the  
10 division the certification and information described in s.  
11 210.87(1)(b), such nonparticipating manufacturer may challenge  
12 such determination as erroneous and seek relief from such  
13 determination by bringing an action in the appellate district  
14 in which the division maintains its headquarters or where a  
15 party resides or as otherwise provided by law to challenge the  
16 division's determination. Upon the filing of such an action,  
17 the division's determination shall be stayed for 20 days. The  
18 court may extend the stay upon a showing by the  
19 nonparticipating manufacturer, after notice to the division,  
20 that such manufacturer has a substantial probability of  
21 success in the action and would suffer irreparable injury in  
22 the absence of a stay.

23 210.91 Additional authority of division and the  
24 Attorney General.--

25 (1) REVISION OF LIST.--Each month the division shall  
26 update the list described in s. 210.85 in order to correct  
27 mistakes and to remove or add brand families, including brand  
28 families of nonparticipating manufacturers that have failed to  
29 make escrow payments required by the MSA statute of an MSA  
30 state, or that have corrected such failures, and new brand  
31 families of participating manufacturers.

1           (2) INFORMATION SHARING.--The division and the  
2 Attorney General may share with each other, with other  
3 authorities within this state, and with authorities in other  
4 states the information they receive under this part, including  
5 audits under subsection (3), and may combine such information  
6 with information received from authorities in other states for  
7 purposes of analysis and enforcement.

8           (3) AUDITS.--The Attorney General and the division may  
9 audit, or engage others to audit, information supplied by  
10 nonparticipating manufacturers under s. 210.87(1) and the  
11 division may audit the information supplied by permitholders  
12 under s. 210.88.

13           210.92 Applicants for permits.--No person shall be  
14 issued a permit to act as a permitholder unless such person  
15 has certified, under penalty of perjury, that such person will  
16 comply fully with this part.

17           Section 2. For the year 2002:

18           (1) The reports of permitholders required by s.  
19 210.88, Florida Statutes, shall be due 30 days after the  
20 effective date of this act.

21           (2) The submissions of participating manufacturers  
22 described in s. 210.86(1), Florida Statutes, and the  
23 certifications of nonparticipating manufacturers described in  
24 s. 210.87(1), Florida Statutes, shall be due 45 days after the  
25 effective date of this act.

26           (3) The transmission by the Division of Alcoholic  
27 Beverages and Tobacco of the Department of Business and  
28 Professional Regulation to permitholders and the website  
29 posting under s. 210.85, Florida Statutes, shall be due 90  
30 days after the effective date of this act.

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