

By Senator Burt

16-614-02

1 A bill to be entitled
2 An act relating to tobacco; amending s.
3 215.5601, F.S.; defining the terms
4 "participating manufacturer," "subscribing
5 participating manufacturer," "outdoor
6 advertising," and "transit advertisements";
7 revising legislative intent; specifying
8 procedures by which a tobacco manufacturer may
9 become a "participating manufacturer" or a
10 "subscribing participating manufacturer";
11 providing for funds received from participating
12 manufacturers and subscribing participating
13 manufacturers to be deposited into the Tobacco
14 Settlement Clearing Trust Fund; providing a
15 portion of such funds to the Florida
16 Comprehensive Health Association; providing for
17 a portion of unappropriated funds to be
18 deposited into the Lawton Chiles Endowment
19 Fund; amending s. 210.15, F.S.; directing
20 wholesalers to pay surcharges required by the
21 chapter; prohibiting specific practices by
22 tobacco product manufacturers, importers,
23 distributing agents, wholesale dealers,
24 exporters or others; amending s. 210.01, F.S.;
25 defining the terms "surcharges," "participating
26 manufacturer," and "subscribing participating
27 manufacturer"; creating s. 210.0220, F.S.;
28 providing for imposition of the public health
29 tobacco equity surcharge; providing legislative
30 intent; providing applicability of specified
31 provisions of law; creating s. 210.0221, F.S.;

1 imposing the public health tobacco equity
2 surcharge on the sale, receipt, purchase,
3 possession, consumption, handling,
4 distribution, and use of cigarettes in this
5 state; specifying the amount of the surcharge;
6 providing that the surcharge will be paid by
7 the wholesale dealer; providing for collection
8 of surcharge; requiring collection and payment
9 to the division; providing for interest on
10 unpaid amount; providing for responsible party
11 when cigarettes shipped to other than wholesale
12 dealer; creating s. 210.0222, F.S.; providing
13 credit against surcharge for participating
14 manufacturers and subscribing participating
15 manufacturers; providing amount of credit;
16 creating s. 210.0223, F.S.; providing for
17 deposit of proceeds to the Tobacco Settlement
18 Clearing Trust Fund; defining "proceeds";
19 creating s. 210.0224, F.S.; providing for
20 duties of the division; providing for reports
21 from participating manufacturers and
22 subscribing participating manufacturers;
23 creating s. 210.0225, F.S.; providing intent
24 related to severability and impact of
25 declaration of unconstitutionality; amending s.
26 215.5602, F.S.; conforming references; amending
27 s. 17.41, F.S., conforming a cross-reference;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Section 215.5601, Florida Statutes, is
2 amended to read:

3 215.5601 Lawton Chiles Endowment Fund.--

4 (1) SHORT TITLE.--This section may be cited as the
5 "Lawton Chiles Endowment Fund."

6 (2) DEFINITIONS.--As used in this section, the term:

7 (a) "Board" means the State Board of Administration
8 established by s. 16, Art. IX of the State Constitution of
9 1885 and incorporated into s. 9(c), Art. XII of the State
10 Constitution of 1968.

11 (b) "Endowment" means the Lawton Chiles Endowment
12 Fund.

13 (c) "Earnings" means all income generated by
14 investments and the net change in the market value of assets.

15 (d) "Outdoor advertising" means billboards, as well as
16 all signs and placards in arenas and stadia, whether open-air
17 or enclosed. It does not include:

18 1. Any advertisement placed on or outside the premises
19 of retail establishments licensed to sell tobacco products or
20 any retail point-of-sale; or

21 2. Any advertisement or billboard in connection with
22 the sponsorship by a tobacco product manufacturer or importer
23 of any entertainment, sporting, or similar event, such as the
24 National Association for Stock Car Auto Racing (NASCAR) which
25 appears in the State of Florida as part of a national or
26 multi-state tour.

27 (e) "Participating manufacturer" means any
28 manufacturer of tobacco products which meets the requirements
29 of subsection (4)(a).

30 (f)~~(d)~~ "State agency" or "state agencies" means the
31 Department of Health, the Department of Children and Family

1 Services, the Department of Elderly Affairs, or the Agency for
2 Health Care Administration, or any combination thereof, as the
3 context indicates.

4 (g) "Subscribing participating manufacturer" means any
5 manufacturer of tobacco products which meets the requirements
6 of subsection (4)(c).

7 (h) "Transit advertisements" means advertising on
8 private or public vehicles and all advertisements placed at,
9 on, or within any bus stop, taxi stand, waiting area, train
10 station, airport, or similar location.

11 (3) LEGISLATIVE INTENT.--It is the intent of the
12 Legislature to:

13 (a) Provide a perpetual source of funding for the
14 future of state children's health programs, child welfare
15 programs, children's community-based health and human services
16 initiatives, elder programs, and biomedical research
17 activities.

18 (b) Ensure that enhancement revenues will be available
19 to finance these important programs and initiatives.

20 (c) Use funds received from the Tobacco Settlement
21 Clearing Trust Fund ~~moneys~~ to ensure the financial security of
22 vital health and human services programs for children and
23 elders.

24 (d) Encourage the development of community-based
25 solutions to strengthen and improve the quality of life of
26 Florida's most vulnerable citizens, its children and elders.

27 (e) Provide funds for cancer research and
28 public-health research for diseases linked to tobacco use.

29 (f) Provide tobacco manufacturers the opportunity to
30 voluntarily participate in mitigating the impact of the use of
31 tobacco on the residents of this state.

1 (4) PARTICIPATING MANUFACTURERS; QUALIFICATIONS.--
2 (a) A tobacco manufacturer may become a participating
3 manufacturer for purposes of this section if:
4 1. The manufacturer is a signatory to the August 25,
5 1997, and December 7, 1998, settlement agreements in The State
6 of Florida, et al. v. American Tobacco Company, et al.
7 Fifteenth Judicial Circuit Case No. 95-1466, who is in
8 compliance with all economic and noneconomic requirements in
9 those agreements on the date of enactment of this act; and
10 2. The manufacturer annually posts a performance bond
11 payable to the Department of Business and Professional
12 Regulation based upon the greater of the manufacturer's actual
13 prior year's sales volume in this state, or estimated annual
14 Florida sales volume, in an amount sufficient to secure
15 payment of all of the annual tobacco equity surcharge as
16 prescribed in ss. 210.0220, 210.0221, and 210.0222. The bond
17 shall be in a form approved by the department, executed by a
18 surety company licensed to do business under the laws of this
19 state as surety thereon, and conditioned upon the prompt
20 filing of true reports, the timely payment to the State of
21 Florida of the manufacturer's monetary agreement obligations,
22 and generally upon faithful compliance with the provisions of
23 the agreement and the laws of this state concerning sale and
24 distribution of cigarettes. The manufacturer shall be the
25 principal obligor, and the state shall be the obligee.
26 (b) Any such manufacturer whose obligations under such
27 settlement agreements are abated, excused, nullified, or
28 stayed, in total or in part, due to judicial action after the
29 enactment of this act is not a "participating manufacturer"
30 for purposes of this section.
31

1 (c) A tobacco manufacturer or importer may become a
2 "subscribing participating manufacturer" for purposes of this
3 section, by entering into an agreement with the State of
4 Florida Department of Business and Professional Regulation and
5 the Office of the Attorney General, which agreement provides
6 for all of the following:
7 1. Elimination of the subscribing participating
8 manufacturer's outdoor advertising and transit advertisements
9 at the earlier of the expiration of applicable contracts or 4
10 months after the date the final list of the subscribing
11 participating manufacturer's outdoor advertising signs is
12 supplied to the Attorney General. The manufacturer or importer
13 shall provide a final list of all its outdoor advertising
14 signs and transit advertisements to the Attorney General
15 within 45 days after entering the agreement;
16 2. Support of legislative initiatives to enact new
17 laws and administrative initiatives to promulgate new rules
18 intended to effectuate the following:
19 a. Prohibition of the sale of cigarettes in vending
20 machines, except in adult-only locations and facilities;
21 b. Strengthening of civil penalties for sales of
22 tobacco products to children under the age of 18, including
23 the suspension or revocation of retail licenses; and
24 c. Strengthening of civil penalties for possession of
25 tobacco products by children under the age of 18;
26 3. Prohibition on making or causing to be made, in
27 connection with any motion picture made in the United States,
28 any payment, direct or indirect, to any person to use,
29 display, or make reference to or use as a prop any cigarette,
30 cigarette package, advertisement for cigarettes, or any other
31 item bearing the brand name, logo, symbol, motto, selling

1 message, recognizable color or pattern of colors, or any other
2 indicia of product identification identical or similar to, or
3 identifiable with, those used for any brand of domestic
4 tobacco products;

5 4. Prohibition and permanent cessation on marketing,
6 licensing, distributing, selling or offering, directly or
7 indirectly, including by catalogue or direct mail, in the
8 state, any item other than tobacco products or any item, of
9 which the sole function is to advertise tobacco products which
10 bears the brand name (alone or in conjunction with any other
11 word), logo, symbol, motto, selling message, recognizable
12 color or pattern of colors, or any other indicia of product
13 identification identical or similar to or identifiable with
14 those used for any brand of domestic tobacco products;

15 5. Payment to the State of Florida, Department of
16 Business and Professional Regulation by the earlier of
17 December 31, or the last business day of each calendar year,
18 of a public health tobacco equity contribution for mitigation
19 of Florida's taxpayer-borne health and other costs and
20 expenses related to tobacco use;

21 6. The manufacturer annually posts a performance bond
22 payable to the Department of Business and Professional
23 Regulation based upon the greater of the manufacturer's
24 actual prior year's sales volume in Florida, or estimated
25 annual Florida sales volume, in an amount sufficient to secure
26 payment of all of the annual tobacco equity contribution as
27 required in this section. The bond shall be in a form approved
28 by the department, executed by a surety company licensed to do
29 business under the laws of this state as surety thereon, and
30 conditioned upon the prompt filing of true reports, the
31 payment to the department of the tobacco equity contribution

1 and tobacco equity surcharge, and generally upon faithful
2 compliance with the provisions of the agreement and the laws
3 of this state concerning sale and distribution of cigarettes.
4 The manufacturer shall be the principal obligor, and the state
5 shall be the obligee.

6 (c) The public health tobacco equity contribution
7 received by the Department of Business and Professional
8 Regulation from subscribing participating manufacturers shall
9 be deposited into the Department of Banking and Finance
10 Tobacco Settlement Clearing Trust Fund.

11 (5) Beginning July 1, 2001, \$10 million of the funds
12 collected from subscribing participating manufacturers and the
13 public health tobacco equity surcharge imposed by s. 210.0221
14 shall be transferred from the Tobacco Settlement Clearing
15 Trust Fund to the Florida Comprehensive Health Association
16 created in s. 627.6488, for coverage of new participants.
17 Effective April 1, 2002, the association may provide coverage
18 for up to 500 persons for the period ending December 31, 2002.
19 On or after January 1, 2003, the association may enroll an
20 additional 1,500 persons. At no time may the association
21 provide coverage for more than 2,000 persons.

22 (6)(4) LAWTON CHILES ENDOWMENT FUND; CREATION;
23 PURPOSES AND USES.--

24 (a) There is created the Lawton Chiles Endowment Fund,
25 to be administered by the State Board of Administration. The
26 endowment shall serve as a clearing trust fund not subject to
27 termination pursuant to s. 19(f), Art. III of the State
28 Constitution and shall be funded by ~~settlement~~ moneys received
29 from the Tobacco Settlement Clearing Trust Fund ~~industry~~ and
30 by moneys received from the sale of the state's right, title,
31 and interest in and to the tobacco settlement agreement,

1 including the right to receive payments under such agreement.
2 The endowment fund shall be exempt from the service charges
3 imposed by s. 215.20.

4 (b) Funds from the endowment that are available for
5 legislative appropriation pursuant to subsection (8)~~(6)~~ shall
6 be transferred by the board to the Tobacco Settlement Clearing
7 Trust Fund, created in s. 17.41, in the amounts provided for
8 in this paragraph.

9 1. For fiscal year 2000-2001, funds shall be
10 distributed based on legislative appropriations.

11 2. For fiscal year 2001-2002 and beyond, funds shall
12 be distributed annually as follows:

13 a. Fifty percent shall be deposited into a separate
14 account in the Department of Children and Family Services
15 Tobacco Settlement Trust Fund to be appropriated pursuant to
16 paragraph (10)(a)~~(8)(a)~~;

17 b. Thirty-three and one-half percent shall be
18 deposited into the Biomedical Research Trust Fund in the
19 Department of Health to be appropriated pursuant to paragraph
20 (10)(b)~~(8)(b)~~, if such a trust fund is created by law;
21 otherwise, the funds shall be deposited into the Department of
22 Health Tobacco Settlement Trust Fund; and

23 c. The remaining funds shall be deposited into a
24 separate account in the Department of Elderly Affairs Tobacco
25 Settlement Trust Fund to be appropriated pursuant to paragraph
26 (10)(a)~~(8)(a)~~.

27 (c) Subject to legislative appropriations, state
28 agencies shall use distributions from the endowment fund to
29 enhance services for children and elders or to support
30 biomedical research initiatives pursuant to s. 215.5602.

31

1 (d) No later than October 1 of each year, the
2 Secretary of Health, the Secretary of Children and Family
3 Services, and the Secretary of Health Care Administration
4 shall develop a list of the top five funding priorities for
5 children's services eligible for funding from the endowment
6 funds, and the Secretary of Health, the Secretary of Elderly
7 Affairs, and the Secretary ~~Director~~ of Health Care
8 Administration shall develop a list of the top five funding
9 priorities for elder services eligible for funding from the
10 endowment funds. No later than November 15 of each year, the
11 list for children's services must be submitted to the advisory
12 council for children's services created in paragraph(11)(a)
13 ~~(9)(a)~~, and the list for elder services must be submitted to
14 the advisory council for elder services created in paragraph
15 (11)(b) ~~(9)(b)~~. The purposes of using the advisory councils
16 are to evaluate the funding priorities of the agencies, to
17 evaluate the request against the mission and goals of the
18 agencies, to allow for public input and advocacy, and to gain
19 consensus for priority requests and recommended endowment
20 funding levels for those priority requests.

21 (e) Funds distributed from the endowment fund may not
22 be used to supplant existing revenues.

23 (f) When advised by the Revenue Estimating Conference
24 that a deficit will occur with respect to the appropriations
25 from the tobacco settlement trust funds of the state agencies
26 in any fiscal year, the Governor shall develop a plan of
27 action to eliminate the deficit. Before implementing the plan
28 of action, the Governor must comply with the provisions of s.
29 216.177(2). In developing the plan of action, the Governor
30 shall, to the extent possible, preserve legislative policy and
31 intent, and, absent any specific directions to the contrary in

1 the General Appropriations Act, any reductions in
2 appropriations from the tobacco settlement trust funds of the
3 state agencies for a fiscal year shall be prorated among the
4 purposes for which funds were appropriated from that Tobacco
5 Settlement Clearing Trust Fund for that year.

6 (7)~~(5)~~ ADMINISTRATION OF THE ENDOWMENT.--

7 (a) The board is authorized to invest and reinvest
8 funds of the endowment in those securities listed in s.
9 215.47, in accordance with the fiduciary standards set forth
10 in s. 215.47(9) and consistent with an investment plan
11 developed by the executive director and approved by the board.
12 Costs and fees of the board for investment services shall be
13 deducted from the earnings accruing to the endowment.

14 (b) The endowment shall be managed as an annuity. The
15 investment objective shall be long-term preservation of the
16 real value of the principal and a specified regular annual
17 cash outflow for appropriation, as nonrecurring revenue. The
18 schedule of annual cash outflow shall be included within the
19 investment plan adopted pursuant to paragraph (a).

20 (c) The board shall establish a separate account for
21 the funds of the endowment. The board shall design and operate
22 an investment portfolio that maximizes the financial return to
23 the endowment, consistent with the risks inherent in each
24 investment, and that is designed to preserve an appropriate
25 diversification of the portfolio.

26 (d) No later than August 15 and February 15 of each
27 year, the board shall report on the financial status of the
28 endowment to the Governor, the Speaker of the House of
29 Representatives, the President of the Senate, the chairs of
30 the respective appropriations and appropriate substantive
31

1 committees of each chamber, and the Revenue Estimating
2 Conference.

3 (e) Accountability for funds from the endowment which
4 have been appropriated to a state agency shall reside with the
5 state agency. The board is not responsible for the proper
6 expenditure or accountability of funds from the endowment
7 after transfer to the Tobacco Settlement Clearing Trust Fund.

8 (f) The board may collect a fee for service from the
9 endowment no greater than that charged to the Florida
10 Retirement System.

11 (8)~~(6)~~ AVAILABILITY OF FUNDS.--

12 (a) Funds from the endowment shall not be available
13 for appropriation to a state agency until July 1, 2000.
14 Beginning July 1, 2000, the maximum annual amount of endowment
15 funds that may be appropriated shall be in accordance with the
16 following, based on earnings averaged over 3 years:

17 1. Beginning July 1, 2000, no more than a level of
18 spending representing earnings at a rate of 3 percent.

19 2. Beginning July 1, 2001, no more than a level of
20 spending representing earnings at a rate of 4 percent.

21 3. Beginning July 1, 2002, no more than a level of
22 spending representing earnings at a rate of 5 percent.

23 4. Beginning July 1, 2003, and thereafter, no more
24 than a level of spending representing earnings at a rate of 6
25 percent.

26 (b) Notwithstanding the provisions of s. 216.301 and
27 pursuant to s. 216.351, all unencumbered balances of
28 appropriations as of June 30 or undisbursed balances as of
29 December 31 shall revert to the endowment's principal.

30 (9)~~(7)~~ ENDOWMENT PRINCIPAL.--The endowment shall
31 receive moneys from the sale of the state's right, title, and

1 interest in and to the tobacco settlement agreement and from
2 amounts transferred from the Department of Banking and Finance
3 Tobacco Settlement Clearing Trust Fund. Amounts to be
4 transferred from the clearing trust fund shall be in the
5 following amounts for the following fiscal years:

6 (a) For fiscal year 1999-2000, \$1.1 billion;

7 (b) For fiscal year 2000-2001, \$200 million;

8 (c) For fiscal year 2001-2002, \$200 million; ~~and~~

9 (d) For fiscal year 2002-2003, \$200 million; ~~and-~~

10 (e) For all subsequent fiscal years, \$30 million.

11
12 Amounts to be transferred pursuant to paragraphs (b), (c), ~~and~~
13 (d), and (e) shall be reduced by an amount equal to the lesser
14 of the amount scheduled to be transferred in that fiscal year
15 pursuant to such paragraphs ~~\$200 million~~ or the amount the
16 endowment receives in that fiscal year pursuant to the sale of
17 the state's right, title, and interest in and to the tobacco
18 settlement agreement.

19 (10) ~~(8)~~ APPROPRIATIONS OF THE ENDOWMENT

20 EARNINGS.--Beginning with fiscal year 2001-2002:

21 (a) Appropriations by the Legislature to the
22 Department of Children and Family Services or the Department
23 of Elderly Affairs from the endowment earnings distributed to
24 those departments shall be from a category called Lawton
25 Chiles Endowment Fund Programs. The departments shall
26 distribute such appropriations pursuant to any directions or
27 limitations provided for in the General Appropriations Act and
28 consistent with this section.

29 (b) Appropriations by the Legislature to the
30 Department of Health from the endowment earnings distributed
31 to the department shall be from a category called Florida

1 Biomedical Research Program. The department shall spend such
2 funds in accordance with s. 215.5602.

3 (11)~~(9)~~ LAWTON CHILES ENDOWMENT FUND ADVISORY
4 COUNCILS.--There are established the Lawton Chiles Endowment
5 Fund Advisory Councils, the purpose of which is to evaluate
6 and rank for legislative consideration recommendations
7 submitted to the councils by the agencies for evaluation under
8 paragraph~~(6)(d)~~(4)(d).

9 (a) There is created within the Department of Children
10 and Family Services the Lawton Chiles Endowment Fund Advisory
11 Council for Children.

12 1. The council shall consist of 13 members, including
13 the director of the United Way of Florida, Inc., or a
14 designee, the director of the Florida Federation of Community
15 Foundations or a designee, the director of the Florida Foster
16 Parents Association or a designee, and the director of the
17 Florida Pediatric Association or a designee. The Governor
18 shall appoint the remaining council members, including:

- 19 a. An academic expert in child health policy.
20 b. A representative of a children's services council.
21 c. A representative of the Guardian Ad Litem Program.
22 d. A representative of a child welfare lead agency for
23 community-based care.
24 e. A representative of a statewide child advocacy
25 organization.
26 f. A youth representing a statewide youth
27 organization.
28 g. A professional who has expertise in the area of
29 child development.
30 h. Two consumer caregivers of children.

31

1 2. The council shall adopt internal organizational
2 procedures, including procedures for the appointment of a
3 chair, as necessary for its efficient organization.

4 3. The department shall provide such staff,
5 information, and other assistance as is reasonably necessary
6 to assist the council in carrying out its responsibilities.

7 4. Members of the council shall serve without
8 compensation, but may receive reimbursement as provided in s.
9 112.061 for travel and other necessary expenses incurred in
10 the performance of their official duties.

11 5. Before February 1 of each year, the council shall
12 advise the Legislature as to its ranking of the children's
13 programs submitted by the agencies for evaluation under
14 paragraph(6)(d)~~(4)(d)~~. The responsibilities of the council
15 may include, but are not limited to:

16 a. Developing criteria and guiding principles for the
17 ranking of programs to be recommended to the Legislature.

18 b. Evaluating the value of programs or services
19 submitted by the agencies as they relate to overall
20 enhancement for children.

21 c. Providing recommendations on the funding levels to
22 be allocated for the ranked programs.

23 d. Participating in periodic program evaluation to
24 determine the need for continued funding.

25 e. Soliciting appropriate input from children's
26 advocates and community stakeholders, such as voluntary
27 organizations, community-based care lead agencies, health care
28 delivery systems, business and industry, government agencies,
29 and children's service providers.

30
31

1 (b) There is created within the Department of Elderly
2 Affairs the Lawton Chiles Endowment Fund Advisory Council for
3 Elders.

4 1. The council shall consist of 13 members, including
5 the director of the United Way of Florida, Inc., or a
6 designee, the director of the Florida Federation of Community
7 Foundations or a designee, the director of the Florida branch
8 of the American Association of Retired Persons or a designee,
9 the director of the Florida Council on Aging or a designee,
10 and the State Long-Term Care Ombudsman or a designee. The
11 Governor shall appoint the remaining council members,
12 including:

13 a. An academic expert in elder health policy.

14 b. A professional who has experience with the delivery
15 of home care services.

16 c. A physician who is certified in geriatric medical
17 care.

18 d. A professional who has experience with the delivery
19 of services in adult congregate care facilities.

20 e. A professional who has experience with the delivery
21 of services in a nursing home.

22 f. Two persons who are over the age of 60 years to
23 represent elders.

24 g. One consumer caregiver for an elderly person.

25 2. The council shall adopt internal organizational
26 procedures, including the appointment of a chair, as necessary
27 for its efficient organization.

28 3. The department shall provide such staff,
29 information, and other assistance as is reasonably necessary
30 to assist the council in carrying out its responsibilities.
31

1 4. Members of the council shall serve without
2 compensation, but may receive reimbursement as provided in s.
3 112.061 for travel and other necessary expenses incurred in
4 the performance of their official duties.

5 5. Before February 1 of each year, the council shall
6 advise the Legislature as to its ranking of the elder programs
7 submitted by the agencies for evaluation under paragraph
8 (6)(d)~~(4)(d)~~. The responsibilities of the council may
9 include, but are not limited to:

10 a. Developing criteria and guiding principles for the
11 ranking of programs to be recommended to the Legislature.

12 b. Evaluating the value of programs or services
13 submitted by the agencies as they relate to overall
14 enhancement for elders.

15 c. Providing recommendations on the funding levels to
16 be allocated for the ranked programs.

17 d. Participating in periodic program evaluation to
18 determine the need for continued funding.

19 e. Soliciting appropriate input from elder advocates
20 and community stakeholders, such as voluntary organizations,
21 community-based care lead agencies, health care delivery
22 systems, business and industry, government agencies, and
23 elder-service providers.

24 Section 2. Subsection (1) of section 210.15, Florida
25 Statutes, is amended to read:

26 210.15 Permits.--

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

1 cigarette permit shall be made on forms furnished by the
2 division and shall set forth the name under which the
3 applicant transacts or intends to transact business, the
4 location of the applicant's place of business within the
5 state, and such other information as the division may require.
6 If the applicant has or intends to have more than one place of
7 business dealing in cigarettes within this state, the
8 application shall state the location of each place of
9 business. If the applicant is an association, the application
10 shall set forth the names and addresses of the persons
11 constituting the association, and if a corporation, the names
12 and addresses of the principal officers thereof and any other
13 information prescribed by the division for the purpose of
14 identification. The application shall be signed and verified
15 by oath or affirmation by the owner, if a natural person, and
16 in the case of an association or partnership, members or
17 partners thereof, and in the case of a corporation, by an
18 executive officer thereof or by any person specifically
19 authorized by the corporation to sign the application, to
20 which shall be attached the written evidence of this
21 authority. The cigarette permit for a distributing agent shall
22 be issued annually for which an annual fee of \$5 shall be
23 charged.

24 (b) The holder of any duly issued, annual permit for a
25 distributing agent shall be entitled to a renewal of his or
26 her annual permit from year to year as a matter of course, on
27 or before July 1, upon making application to the division and
28 upon payment of this annual permit fee.

29 (c) The permit for a distributing agent, wholesale
30 dealer, or exporter shall be issued only to persons of good
31 moral character, who are not less than 18 years of age.

1 Distributing agent, wholesale dealer, or exporter permits to
2 corporations shall be issued only to corporations whose
3 officers are of good moral character and not less than 18
4 years of age. There shall be no exemptions from the permit
5 fees herein provided to any persons, association of persons or
6 corporation, any law to the contrary notwithstanding. No
7 distributing agent, wholesale dealer, or exporter permit shall
8 be issued to any person who has been convicted within the past
9 5 years of any offense against the cigarette laws of this
10 state or who has been convicted in this state, any other
11 state, or the United States during the past 5 years of any
12 offense designated as a felony by such state or the United
13 States, or to a corporation, any of whose officers have been
14 so convicted. The term "conviction" shall include an
15 adjudication of guilt on a plea of guilty or a plea of nolo
16 contendere, or the forfeiture of a bond when charged with a
17 crime.

18 (d) The division may refuse to issue a distributing
19 agent, wholesale, or exporter permit to any person, firm, or
20 corporation whose permit under the cigarette law has been
21 revoked or to any corporation, an officer of which has had his
22 or her permit under the cigarette law revoked, or to any
23 person who is or has been an officer of a corporation whose
24 permit has been revoked under the cigarette law. Any permit
25 issued to a firm or corporation prohibited from obtaining such
26 permit under the cigarette law may be revoked by the division.

27 (e) Prior to an application for a distributing agent,
28 wholesale dealer, or exporter permit being approved, the
29 applicant shall file a set of fingerprints on forms provided
30 by the division. The applicant shall also file a set of
31 fingerprints for any person or persons interested directly or

1 indirectly with the applicant in the business for which the
2 permit is being sought, when so required by the division. If
3 the applicant or any person interested with the applicant,
4 either directly or indirectly, in the business for which the
5 permit is sought shall be such a person as is within the
6 definition of persons to whom a distributing agent, wholesale
7 dealer, or exporter permit shall be denied, then the
8 application may be denied by the division. If the applicant
9 is a partnership, all members of the partnership are required
10 to file said fingerprints, or if a corporation, all principal
11 officers of the corporation are required to file said
12 fingerprints. The cigarette permit for a wholesale dealer or
13 exporter shall be originally issued at a fee of \$100, which
14 sum is to cover the cost of the investigation required before
15 issuing such permit.

16 (f) The cigarette permit for a wholesale dealer or
17 exporter shall be renewed from year to year as a matter of
18 course, at an annual cost of \$100, on or before July 1, upon
19 making application to the division and upon payment of the
20 annual renewal fee and public health tobacco equity surcharge
21 required in this chapter.

22 (g) No tobacco product manufacturer, importer,
23 distributing agent, wholesale dealer, exporter or other person
24 shall use the State of Florida as a conduit to avoid or evade
25 taxes or other payments, including statutorily mandated escrow
26 payments, due or owing to another state, under the law of that
27 state. Each such manufacturer, importer, distributing agent,
28 wholesale exporter or other person shall provide a sworn
29 certification to the distributing agent, wholesale dealer,
30 exporter, or other person of its compliance with the laws of
31 the receiving state. A distributing agent, wholesale dealer,

1 exporter or other person who is transporting or trans-shipping
2 tobacco products through this state for sale and consumption
3 in another state in violation of this subsection shall be
4 subject to revocation of its permits, licenses and bonds in
5 this state. Tobacco products in this state which are in
6 violation of this part are subject to seizure and destruction
7 by the department.

8 (h)~~(g)~~ Permittees, by acceptance of their permits,
9 agree that their places of business or vehicles transporting
10 cigarettes shall always be subject to be inspected and
11 searched without a search warrant for the purpose of
12 ascertaining that all provisions of this part are complied
13 with by authorized employees of the division and also by
14 sheriffs, deputy sheriffs, and police officers during business
15 hours or during any other time such premises are occupied by
16 the permittee or other persons. Retail cigarette dealers and
17 manufacturers' representatives, by dealing in cigarettes,
18 agree that their places of business or vehicles transporting
19 cigarettes shall always be subject to inspection and search
20 without a search warrant for the purpose of ascertaining that
21 all provisions of this part are complied with by authorized
22 employees of the division and also by sheriffs, deputy
23 sheriffs, and police officers during business hours or other
24 times when the premises are occupied by the retail dealer or
25 manufacturers' representatives or other persons.

26 (i)~~(h)~~ No retail sales of cigarettes may be made at a
27 location for which a wholesale dealer, distributing agent, or
28 exporter permit has been issued. The excise tax on sales made
29 to any traveling location, such as an itinerant store or
30 industrial caterer, shall be paid into the General Revenue
31 Fund unallocated. Cigarettes may be purchased for retail

1 purposes only from a person holding a wholesale dealer permit.
2 The invoice for the purchase of cigarettes must show the place
3 of business for which the purchase is made and the cigarettes
4 cannot be transferred to any other place of business for the
5 purpose of resale.

6 Section 3. Subsections (19), (20), and (21) are added
7 to section 210.01, Florida Statutes, to read:

8 210.01 Definitions.--When used in this part the
9 following words shall have the meaning herein indicated:

10 (19) "Surcharge" means the Public Health Tobacco
11 Equity Surcharge as prescribed in ss. 210.0220, 210.0221, and
12 210.0222.

13 (20) "Participating Manufacturer" has the meaning
14 ascribed in s. 215.5601(2). However, any such manufacturer
15 whose obligations under such agreements are abated, excused,
16 nullified, or stayed, in total or in part, due to judicial
17 action after the enactment of this act is not a "participating
18 manufacturer" for purposes of this part.

19 (21) "Subscribing Participating Manufacturer" has the
20 meaning ascribed in s. 215.5601(2).

21 Section 4. Section 210.0220, Florida Statutes, is
22 created to read:

23 210.0220 Public Health Tobacco Equity Surcharge;
24 Legislative intent and general provisions.--

25 (1)(a) It is the legislative intent that the Public
26 Health Tobacco Equity Surcharge imposed in this part shall be
27 in addition to all other taxes imposed under this chapter and
28 other provisions of law.

29 (b) It is the legislative intent that the Public
30 Health Tobacco Equity Surcharge imposed in this part shall be
31 added to the tax imposed by s. 210.02; that the Public Health

1 Tobacco Equity Surcharge imposed in this part shall not be a
2 substitute for or replace the tax imposed by s. 210.02; and
3 that the Public Health Tobacco Equity Surcharge imposed in
4 this part shall supplement the tax imposed by s. 210.02.

5 (c) The application of any one tax under this part
6 shall not preclude application of any or all of the other
7 taxes or the Public Health Tobacco Equity Surcharge provided
8 herein.

9 (2) The provisions of ss. 210.02, 210.04, 210.05,
10 210.06, 210.021, 210.07, 210.08, 210.09, 210.10, 210.11,
11 210.12, 210.13, 210.14, 210.15, 210.16, 210.1605, 210.161,
12 210.18, 210.185, 210.19, and 210.20 shall, as far as lawful or
13 practicable, be applicable to the levy and collection of the
14 Public Health Tobacco Equity Surcharge imposed pursuant to
15 this section as if fully set out in this section and made
16 expressly applicable to the surcharge imposed in this section.

17 Section 5. Section 210.0221, Florida Statutes, is
18 created to read:

19 210.0221 Public Health Tobacco Equity Surcharge
20 Imposed.--

21 (1) A surcharge, in addition to all other taxes of
22 every kind imposed by law, is imposed upon the sale, receipt,
23 purchase, possession, consumption, handling, distribution, and
24 use of cigarettes in this state per package of cigarettes
25 after October 1, 2001, in the amount of \$0.36 per package of
26 cigarettes.

27 (2) Cigarettes packed in packages containing less than
28 20 cigarettes require the same surcharge of \$0.36 per such
29 package.

30 (3) The surcharge shall be added to the amount of the
31 tax imposed by s. 210.02.

1 (4) This surcharge, like the tax imposed by s. 210.02,
2 shall be paid by the wholesale dealer to the division for
3 deposit and distribution as hereinafter provided upon the
4 first sale or transaction within the state, whether or not
5 such sale or transfer is to the ultimate purchaser or
6 consumer.

7 (5) The wholesale dealer shall collect the surcharge
8 from the retail dealer upon the sale of the cigarettes to the
9 retail dealer. The retail dealer shall collect the surcharge
10 from the purchaser or consumer, and the purchaser or consumer
11 shall pay the surcharge to the seller.

12 (6) The wholesale dealer shall be responsible for the
13 collection of the surcharge and the payment of the same to the
14 division. The remittance of the surcharge is due not later
15 than the 10th day of the month following the calendar month in
16 which they were incurred, and thereafter shall bear interest
17 at the rate of 1 percent per month. If the amount of
18 surcharge due for a given period is paid without allocating it
19 to any particular month, the interest shall begin with the
20 date of the assessment.

21 (7) Whenever cigarettes are shipped from outside the
22 state to anyone in this state other than a distributing agent
23 or wholesale dealer, the person receiving the cigarettes shall
24 be responsible for the surcharge on the cigarettes and the
25 payment of the surcharge to the division.

26 Section 6. Section 210.0222, Florida Statutes, is
27 created to read:

28 210.0222 Credit on the Payment of the Surcharge.--

29 (1)(a) A \$0.36 per package of cigarettes credit of
30 this public health tobacco equity surcharge shall be extended
31 for cigarettes sold in Florida after October 1, 2001, which

1 have been produced or manufactured by each Participating
2 Manufacturer, as defined in s. 215.5601(4)(a).

3 (b) The credit to each Participating Manufacturer
4 shall be computed per package on an annual basis by the
5 division. The total annual credit shall not exceed the amount
6 annually owed by each Participating Manufacturer to the State
7 of Florida under the qualifying settlement agreements
8 enumerated in s. 215.5601(4)(a).

9 (2)(a) Cigarettes produced by each Subscribing
10 Participating Manufacturer that fully comply with the
11 agreement entered into with the Attorney General under s.
12 215.5601(4)(c) shall receive a credit of this public health
13 tobacco equity surcharge for each package of cigarettes sold
14 in this state after October 1, 2001, which has been produced
15 or manufactured by each Subscribing Participating Manufacturer
16 as defined in s. 215.5601(4)(c).

17 (b) A \$0.36 per package of cigarettes credit of this
18 public health tobacco equity surcharge shall be extended for
19 each package of cigarettes sold in this state after October 1,
20 2001, which has been produced or manufactured by each
21 Subscribing Participating Manufacturer, as defined in s.
22 215.5601(4)(c).

23 (c) The credit to each Subscribing Participating
24 Manufacturer shall be computed per package on an annual basis
25 by the division. The total annual credit shall not exceed the
26 amount annually paid by each Subscribing Participating
27 Manufacturer to the State of Florida under the qualifying
28 settlement agreements enumerated in s. 215.5601(4)(c).

29 Section 7. Section 210.0223, Florida Statutes, is
30 created to read:

31

1 210.0223 Deposit of Proceeds.--The proceeds of the
2 public health tobacco equity surcharge received by the
3 Department of Business and Professional Regulation shall be
4 deposited into the Department of Banking and Finance Tobacco
5 Settlement Clearing Trust Fund. For the purposes of this
6 section, "proceeds" of the surcharge shall mean all funds
7 collected and received by the division hereunder, including
8 interest and penalties on delinquent surcharge payments.

9 Section 8. Section 210.0224, Florida Statutes, is
10 created to read:

11 210.0224 Administration.--

12 (1) The division shall administer, collect, and
13 enforce the surcharge imposed under this part pursuant to the
14 same procedures used in the administration, collection, and
15 enforcement of the general state excise tax imposed under part
16 I of this chapter, except as provided in this section.

17 (2) The division is authorized to adopt rules to
18 implement the provisions of this part.

19 (3) The participating manufacturers and subscribing
20 participating manufacturers shall provide to the division on a
21 quarterly basis a complete list of those products produced by
22 such manufacturers and shipped into the state. Failure to
23 timely provide the information required by this section shall
24 constitute a waiver of the credit for the reporting period.

25 (4) The division will quarterly provide the wholesale
26 dealers with a list of those products produced by the
27 Participating Manufacturers and Subscribing Participating
28 Manufacturers that qualify for the credit allowed under s.
29 210.0222.

30 Section 9. Section 210.0225, Florida Statutes, is
31 created to read:

1 210.0225 Declaration of Legislative Intent.--
2 (1) If any section, subsection, sentence, clause,
3 phrase or word of this law is for any reason held or declared
4 to be unconstitutional, invalid, inoperative, ineffective,
5 inapplicable, or void, such invalidity or unconstitutionality
6 shall not be construed to affect the portions of this law not
7 so held to be unconstitutional, void, invalid, or ineffective,
8 or affect the application of this law to other circumstances
9 not so held to be invalid, it being hereby declared to be the
10 express legislative intent that any such unconstitutional,
11 illegal, invalid, ineffective, inapplicable, or void portion
12 or portions of this law did not induce its passage, and that
13 without the inclusion of any such unconstitutional, illegal,
14 invalid, ineffective, or void portions of this law, the
15 Legislature would have enacted the valid and constitutional
16 portions thereof.
17 (2) It is hereby declared to be the specific
18 legislative intent to impose the public health tobacco equity
19 surcharge on each and every pack of cigarettes sold in the
20 state after October 1, 2001. It is further declared to be the
21 specific legislative intent that should any credit or
22 attempted credit from the public health tobacco equity
23 surcharge or from the operation or imposition of the public
24 health tobacco equity surcharge be declared to be invalid,
25 ineffective, inapplicable, unconstitutional, or void for any
26 reason, such declaration shall not affect the public health
27 tobacco equity surcharge imposed in this act, but such sales
28 of cigarettes for which a credit is given or a credit is
29 attempted to be given from the public health tobacco equity
30 surcharge, shall be subject to the public health tobacco
31 equity surcharge and the operation and imposition thereof to

1 the same extent as if such credit or attempted credit had
2 never been included herein.

3 (3) It is further declared to be the specific
4 legislative intent to provide a credit from the public health
5 tobacco equity surcharge or from the operation or the
6 imposition thereof only to the extent that such credits are in
7 accordance with the provisions of the constitutions of the
8 state and of the United States.

9 (4) It is further declared to be the specific
10 legislative intent to impose the public health tobacco equity
11 surcharge on each and every sale of cigarettes in the state,
12 specifically providing a credit therefrom by this law to the
13 extent that such credits are in accordance with the provisions
14 of the constitutions of the state and of the United States.

15 (5) If any credit or attempted credit from the public
16 health tobacco equity surcharge imposed by this law is for any
17 reason declared to be unconstitutional, ineffective,
18 inapplicable, or void, every sale of cigarettes shall be
19 subject to the public health tobacco equity surcharge imposed
20 by this law as fully and to the same extent as if such credit
21 or attempted credit had never been allowed. The Legislature
22 declares that no unconstitutional, invalid, ineffective,
23 inapplicable, or void credit or attempted credit induced the
24 passage of this law and that the valid portions of this law
25 would have been enacted without the inclusion of any such
26 unconstitutional, invalid, ineffective, inapplicable, or void
27 credit or attempted credit.

28 (6) It is the legislative intent that the repeal of
29 any provision heretofore providing a credit in whole or part
30 of any item or transaction from the public health tobacco
31 equity surcharge imposed by this law shall result in the full

1 imposition of the public health tobacco equity surcharge to
2 any such item or transaction.

3 Section 10. Subsection (4) of section 17.41, Florida
4 Statutes, is amended to read:

5 17.41 Department of Banking and Finance Tobacco
6 Settlement Clearing Trust Fund.--

7 (4) Net proceeds of the sale of the tobacco settlement
8 agreement received by the state shall be immediately deposited
9 into the Lawton Chiles Endowment Fund, created in s. 215.5601
10 ~~s. 215.5601(4)~~, without deposit to the Tobacco Settlement
11 Clearing Trust Fund.

12 Section 11. Paragraph (h) of subsection (1) of section
13 20.435, Florida Statutes, is amended to read:

14 20.435 Department of Health; trust funds.--

15 (1) The following trust funds are hereby created, to
16 be administered by the Department of Health:

17 (h) Biomedical Research Trust Fund.

18 1. Funds to be credited to the trust fund shall
19 consist of funds deposited pursuant to s. 215.5601(6)~~s.~~
20 ~~215.5601(4)~~. Funds shall be used for the purposes of the
21 Florida Biomedical Research Program as specified in s.
22 215.5602. The trust fund is exempt from the service charges
23 imposed by s. 215.20.

24 2. Notwithstanding the provisions of s. 216.301 and
25 pursuant to s. 216.351, any balance in the trust fund at the
26 end of any fiscal year shall remain in the trust fund at the
27 end of the year and shall be available for carrying out the
28 purposes of the trust fund.

29 3. The trust fund shall, unless terminated sooner, be
30 terminated on July 1, 2004.

31

1 Section 12. Subsection (1) of section 215.5602,
2 Florida Statutes, is amended to read:

3 215.5602 Florida Biomedical Research Program.--

4 (1) There is established within the Department of
5 Health the Florida Biomedical Research Program funded by the
6 proceeds of the Lawton Chiles Endowment Fund pursuant to s.
7 215.5601 ~~s. 215.5601(4)~~. The purpose of the Florida Biomedical
8 Research Program is to support research initiatives that
9 address the health care problems of Floridians in the areas of
10 cancer, cardiovascular disease, stroke, and pulmonary disease.
11 The long-term goals of the program are to:

12 (a) Improve the health of Floridians by researching
13 better prevention, diagnoses, and treatments for cancer,
14 cardiovascular disease, stroke, and pulmonary disease.

15 (b) Expand the foundation of biomedical knowledge
16 relating to the prevention, diagnosis, and treatment of
17 diseases related to tobacco use, including cancer,
18 cardiovascular disease, stroke, and pulmonary disease.

19 (c) Improve the quality of the state's academic health
20 centers by bringing the advances of biomedical research into
21 the training of physicians and other health care providers.

22 (d) Increase the state's per capita funding for
23 biomedical research by undertaking new initiatives in
24 biomedical research that will attract additional funding from
25 outside the state.

26 (e) Stimulate economic activity in the state in areas
27 related to biomedical research, such as the research and
28 production of pharmaceuticals, biotechnology, and medical
29 devices.

30 Section 13. This act shall take effect upon becoming a
31 law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Imposes a supplemental permit fee on cigarettes produced by manufacturers in order to support the state's campaign to reduce tobacco product consumption and related health-care costs and to correct economic market disparities among tobacco product manufacturers which were inadvertently created by the tobacco settlement agreements. Provides exemptions from the supplemental fee to certain participating manufacturers. Directs that funds received from the participating manufacturers be deposited in the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund and that funds received from the assessments be deposited into the Lawton Chiles Endowment Fund. Provides for an appropriation to the Lawton Chiles Endowment Fund. (See bill for details.)