

By the Committee on Regulated Industries; and Senator Mitchell

315-2131-02

1 A bill to be entitled
2 An act relating to the tobacco settlement;
3 creating part II of ch. 210, F.S., consisting
4 of ss. 210.81-210.90, F.S.; providing a short
5 title; providing legislative purpose; defining
6 terms; prohibiting a permittee or licensee
7 under ch. 210, F.S., from shipping or
8 possessing for sale in or out of this state
9 cigarettes not included on a list approved by
10 the Division of Alcoholic Beverages and Tobacco
11 of the Department of Business and Professional
12 Regulation; requiring the division to annually
13 prepare a list of certified cigarette brands;
14 providing requirements under which a
15 manufacturer's brands may be included on the
16 list; providing requirements for certification;
17 requiring that the division notify a
18 manufacturer and the Attorney General of its
19 determination of certification; requiring
20 reports by a permittee or licensee; authorizing
21 the division to impose penalties against a
22 permittee or licensee who violates the
23 prohibition against the sale or shipment of
24 certain cigarettes or who violates certain
25 reporting requirements; requiring that the
26 Attorney General seek an injunction or bring an
27 action in circuit court to enforce the act;
28 authorizing a manufacturer to bring an action
29 challenging a determination made by the
30 division with respect to enforcing the act;
31 requiring that the division update the list of

1 approved cigarettes; providing for sharing
2 information; providing for confidentiality;
3 providing an effective date.
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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, and 210.91, Florida
10 Statutes, is created to read:

11 210.81 Short title.--This part may be cited as "The
12 Tobacco Settlement Protection Act."

13 210.82 Purpose.--The purpose of this part is to
14 protect Florida's payments under its settlements with various
15 cigarette manufacturers.

16 210.83 Definitions.--As used in this part, the term:

17 (1) "Cigarette" means a cigarette as defined in s.
18 210.01, and includes roll-your-own tobacco. For purposes of
19 this subsection, 0.09 ounces of roll-your-own tobacco
20 constitutes one individual cigarette.

21 (2) "Division" means the Division of Alcoholic
22 Beverages and Tobacco of the Department of Business and
23 Professional Regulation.

24 (3) "Licensee" means any person who holds a license as
25 a distributor under part II.

26 (4) "Master Settlement Agreement" means the settlement
27 agreement and related documents entered into on November 23,
28 1998, by the MSA states and certain tobacco product
29 manufacturers, and includes any amendments thereto.

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

1 (6) "MSA Statute" means the statute enacted by an MSA
2 state to implement Exhibit T to the Master Settlement
3 Agreement.

4 (7) "Participating manufacturer" means a participating
5 manufacturer as that term is defined in section II(jj) of the
6 Master Settlement Agreement and any amendments thereto.

7 (8) "Permittee" means a person who holds a permit as a
8 wholesale dealer, distributing agent, or exporter under part
9 I.

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

13 210.84 Prohibition.--It is unlawful for a permittee or
14 licensee to ship, sell, or deliver to any person in this state
15 or another state cigarettes belonging to a brand family not
16 included on the list prepared by the division under s. 210.85,
17 or to possess those cigarettes for shipment, delivery, or
18 sale.

19 210.85 List of approved cigarettes.--The division
20 shall annually prepare, and by June 1 of each year shall
21 transmit to all permittees and licensees and post on the
22 website of the division, a list of all brand families
23 manufactured for sale to consumers within the United States
24 by:

25 (1) Each tobacco product manufacturer that has
26 provided the division, by May 1 of the year in question or
27 previously, a certification, under penalty of perjury, that it
28 is a participating manufacturer, and the names of all brand
29 families made or sold by the manufacturer; and

30 (2) Each tobacco product manufacturer that has
31 provided the division, by May 1 of the year in question, the

1 certification described in s. 210.86 which the division has
2 approved under that section, and the names of all brand
3 families made or sold by the manufacturer.

4 210.86 Certification by certain manufacturers.--

5 (1) CERTIFICATION.--A tobacco product manufacturer
6 that is not a participating manufacturer shall, as a condition
7 of inclusion in the list prepared under s. 210.85, certify to
8 the division, by May 1 of the year in question, under penalty
9 of perjury, that the manufacturer will in good faith make all
10 escrow payments required by the MSA Statute of each MSA state
11 for sales of its cigarettes during the current calendar year,
12 and that the manufacturer has made in good faith all escrow
13 payments required by the MSA Statute of each MSA state for
14 sales of its cigarettes during the preceding calendar year.
15 The manufacturer shall furnish the information that the
16 division requires to determine whether the certification is
17 true and correct. For purposes of the certification described
18 in this subsection, a tobacco product manufacturer is
19 considered to have made in good faith all escrow payments
20 required by the escrow statute of an MSA state if the escrow
21 payments made by the manufacturer accord with:

22 (a) The MSA state's finding of the number of units of
23 the manufacturer's cigarettes that were sold in the state
24 during the year in question as measured by excise taxes
25 collected by the MSA state with respect to all such
26 cigarettes;

27 (b) An agreement between the tobacco product
28 manufacturer and the MSA state with respect to the
29 manufacturer's obligations under the MSA Statute of the MSA
30 state; or

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1 (c) An order of a court of competent jurisdiction
2 regarding the manufacturer's escrow payment obligation under
3 the MSA Statute of the MSA state.

4 (2) APPROVAL.--The division shall approve the
5 certification of a tobacco product manufacturer under
6 subsection (1) if each MSA state confirms in writing to the
7 division the validity of the certification made by the tobacco
8 product manufacturer.

9 (3) NOTICE OF DETERMINATION.--The division shall
10 promptly notify the manufacturer and the Attorney General of
11 any approval or rejection made under subsection (1). Before
12 the filing of any action by either party in court or the
13 modification of the list under s. 210.85 or s. 210.90, the
14 parties shall work in good faith for 15 business days from the
15 date of the manufacturer's receipt of a notice of a rejection
16 of the certification in order to resolve any issues causing
17 the Attorney General to reject the certification.

18 (4) DEFINITION.--As used in this section, references
19 to cigarettes "sold to consumers within" a state include any
20 cigarettes sold to consumers within the state, whether sold by
21 the manufacturer directly or by a distributor, retailer, or
22 similar intermediary.

23 210.87 Reports.--Each permittee and licensee shall
24 report to the division all shipments, deliveries, and sales of
25 cigarettes to persons in this state and other states during
26 the preceding calendar quarter. The report must state, by
27 manufacturer and brand family, the quantity of cigarettes
28 shipped, delivered, or sold to persons in each state.

29 210.88 Administrative penalties and injunctive
30 relief.--

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1 (1) PENALTIES.--Upon a finding of a violation of s.
2 210.84 by a permittee or licensee, the division may impose
3 upon the permittee or licensee a civil penalty in an amount
4 not to exceed the greater of 500 percent of the retail value
5 of the cigarettes shipped in violation of s. 210.84 or \$5,000.
6 Upon a finding of a second or subsequent violation by a
7 permittee or licensee of s. 210.84, the division may suspend
8 or revoke the license of the licensee or the permit of the
9 permittee.

10 (2) INJUNCTIONS.--The Attorney General, on behalf of
11 the division, may seek an injunction to restrain a permittee
12 or licensee from shipping cigarettes in violation of s. 210.84
13 or to compel a permittee or licensee to submit the information
14 required by s. 210.87.

15 (3) ACTIONS AGAINST MANUFACTURERS.--Based on credible
16 information provided by authorities in an MSA state or other
17 credible information, the Attorney General shall bring an
18 action in circuit court against a tobacco product manufacturer
19 for filing a false certification under of s. 210.86. Upon a
20 finding that the manufacturer has filed a false certification,
21 the court shall issue a permanent injunction prohibiting the
22 manufacturer from selling cigarettes, directly or through a
23 distributor or other intermediary or intermediaries, to
24 permittees and licensees within the state for a period not to
25 exceed 2 years.

26 210.89 Review of division's determination.--Before the
27 division may exclude or remove from the list described in s.
28 210.85 the brand families of a tobacco product, the division
29 must comply with s. 210.86(3). After the expiration of the
30 15-day period specified in s. 210.86(3), a tobacco product
31 manufacturer may challenge the division's rejection of a

1 certification as erroneous and seek relief by bringing an
2 action in the appellate district where the division maintains
3 its headquarters or where a party resides or as otherwise
4 provided by law to challenge the division's determination.
5 Upon the filing of an action, the division's determination
6 shall be stayed for 10 days. The court may extend the stay
7 upon a showing by the manufacturer, after notice to the
8 division, that it has a substantial probability of success in
9 the action and would suffer irreparable injury in the absence
10 of a stay.

11 210.90 Additional authority.--

12 (1) REVISION OF LIST.--The division shall update as
13 necessary, but no less often than monthly, the list described
14 in s. 210.85 in order to correct mistakes; to remove brand
15 families, including brand families of tobacco product
16 manufacturers that have failed to make escrow payments
17 required by the MSA Statute of an MSA state; to restore brand
18 families of tobacco product manufacturers that have corrected
19 such failures; and to add new brand families of tobacco
20 product manufacturers otherwise qualifying for inclusion.

21 (2) INFORMATION SHARING.--The division and Attorney
22 General may share with each other and with other authorities
23 information they receive under this part, and may combine that
24 information with information received from authorities in
25 other states for purposes of analysis and enforcement.

26 Section 2. This act shall take effect upon becoming a
27 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 2140

The Committee Substitute deletes provisions on legislative intent and purpose, audits, applications for permits, and due dates of initial reports and certifications.