



HB 1359

2003

1 A bill to be entitled

2 An act relating to the tax on tobacco products; amending
3 s. 210.01, F.S.; revising and providing additional
4 definitions; amending s. 210.05, F.S.; revising authority
5 of the Division of Alcoholic Beverages and Tobacco to
6 prescribe certain stamps to certain persons; deleting
7 references to wholesalers of cigarettes; requiring the
8 division to revoke certain licenses under certain
9 circumstances; creating s. 210.051, F.S.; regulating
10 delivery sales of cigarettes; prohibiting delivery of
11 cigarettes to certain persons under certain circumstances;
12 providing criteria and requirements; requiring notice of
13 certain information; providing required procedures for
14 delivering cigarettes in a delivery sale; requiring
15 certain statements to be filed with the division;
16 requiring collection and remittance of taxes to the
17 division; providing civil penalties for certain
18 violations; authorizing court actions to prevent or
19 restrain violations; amending s. 210.06, F.S.; revising
20 procedures, requirements, restrictions, and limitations
21 for application of stamps; providing limitations on
22 unstamped cigarette packages; creating s. 210.085, F.S.;
23 limiting sale or distribution of cigarettes to certain
24 permitted entities; providing limitations on obtaining
25 cigarettes by certain persons; amending s. 210.09, F.S.;
26 requiring division notice of certain shipments; providing
27 an exception; authorizing stopping and inspecting certain
28 vehicles for contraband cigarettes; requiring dealers to
29 submit reports to the division; providing reporting
30 requirements; providing for public access to certain



HB 1359

2003

31 records and reports; amending s. 210.12, F.S.; revising
32 seizure and forfeiture provisions; providing for
33 forfeiture of certain property by certain persons under
34 certain circumstances; providing for destruction of
35 cigarettes under certain circumstances; amending s.
36 210.15, F.S.; requiring application for certain permits
37 under certain circumstances; providing limitations on
38 issuance of permits to certain persons; requiring the
39 division to refuse to issue or revoke permits under
40 certain circumstances; deleting certain premises or
41 vehicle inspections and search provisions relating to
42 retail cigarette dealers and manufacturers
43 representatives; amending s. 210.18, F.S.; revising
44 application of criminal penalties for tax evasion;
45 deleting a criminal penalty relating to unstamped
46 cigarettes; providing for seizure of certain property and
47 civil penalties for sale or possession for sale of
48 counterfeit cigarettes; creating s. 210.181, F.S.;
49 providing civil penalties for certain actions; providing
50 an effective date.

51

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

53

54 Section 1. Subsections (6), (7), and (14) of section
55 210.01, Florida Statutes, are amended, and subsections (19),
56 (20), (21), (22), (23), (24), and (25) are added to said
57 section, to read:

58 210.01 Definitions.--When used in this part the following
59 words shall have the meaning herein indicated:



HB 1359

2003

60 (6) "Wholesale dealer" means any person located inside or
61 outside this state who sells cigarettes to retail dealers or
62 other persons for purposes of resale only, or any person who
63 operates more than one cigarette vending machine located in more
64 than one place of business. Such term shall not include any
65 cigarette manufacturer, export warehouse proprietor, or importer
66 with a valid permit under 26 U.S.C. s. 5712 if such person
67 sells or distributes cigarettes in this state only to dealers
68 who are agents and hold valid and current permits under s.
69 210.15 or to an export warehouse proprietor or another
70 manufacturer.

71 (7) "Retail dealer" means any person located inside or
72 outside this state other than a wholesale dealer engaged in the
73 business of selling cigarettes.

74 (14) "Distributing agent" means every person, firm, or
75 corporation in this state who acts as an agent for any
76 manufacturer or importer ~~person, firm or corporation~~ outside or
77 inside the state by receiving cigarettes in interstate or
78 intrastate commerce and storing such cigarettes subject to
79 distribution or delivery upon order from said principal to
80 wholesale dealers and other distributing agents inside or
81 outside this state.

82 (19) "Delivery sale" means any sale of cigarettes to a
83 consumer in this state if:

84 (a) The purchaser submits the order for such sale by means
85 of a telephonic or other method of voice transmission, the mail
86 or any other delivery service, or the Internet or other on-line
87 service; or

88 (b) The cigarettes are delivered by means of the mail or a
89 delivery service. A sale of cigarettes shall be a delivery sale



HB 1359

2003

90 regardless of whether the seller is located inside or outside
91 this state. A sale of cigarettes not for personal consumption to
92 a person who is a wholesale dealer or a retail dealer shall not
93 be a delivery sale. For purposes of this subsection, "delivery
94 service" means any person who is engaged in the commercial
95 delivery of letters, packages, or other containers.

96 (20) "Stamp" or "stamps" means the indicia required to be
97 placed on cigarette packages that evidences payment of the tax
98 on cigarettes under s. 210.02 or the required tax-exempt stamp
99 under s. 210.06(1)(b).

100 (21) "Importer" means any person who imports into the
101 United States, directly or indirectly, a finished cigarette for
102 sale or distribution.

103 (22) "Manufacturer" means any person who manufactures,
104 fabricates, assembles, processes, or labels a finished
105 cigarette.

106 (23) "Mail" or "mailing" means the shipment of cigarettes
107 through the United States Postal Service.

108 (24) "Shipping container" means a container in which
109 cigarettes are shipped in connection with a delivery sale.

110 (25) "Shipping documents" means bills of lading, airbills,
111 or any other documents used to evidence the undertaking by a
112 delivery service to deliver letters, packages, or other
113 containers.

114 Section 2. Subsections (2), (3), and (4) of section
115 210.05, Florida Statutes, are amended to read:

116 210.05 Preparation and sale of stamps; discount.--

117 (2) The division shall prescribe, prepare, and furnish
118 stamps of such denominations and quantities as may be necessary
119 for the payment of the tax imposed by this part, and may from



HB 1359

2003

120 time to time and as often as it deems advisable provide for the
 121 issuance and exclusive use of stamps of a new design and forbid
 122 the use of stamps of any other design. However, all stamps
 123 prescribed by the division must be designed and furnished in a
 124 fashion that permits identification of the agent ~~or wholesale~~
 125 ~~dealer~~ that affixed the stamp to the particular package of
 126 cigarettes by means of a serial number or other mark on the
 127 stamp. The division shall make provisions for the sale of such
 128 stamps at such places and at such time as it may deem necessary.

129 (3)(a) The division may only appoint dealers in
 130 cigarettes, ~~manufacturers of cigarettes,~~ within or without the
 131 state as agent to buy or affix stamps to be used in paying the
 132 tax herein imposed, but an agent shall at all times have the
 133 right to appoint a person in his or her employ who is to affix
 134 the stamps to any cigarettes under the agent's control;
 135 ~~provided, however, that any wholesale dealer in the state shall~~
 136 ~~have the right to buy and affix such stamps.~~ Whenever the
 137 division shall sell and deliver to any such agent ~~or wholesaler~~
 138 any such stamps, such agent ~~or wholesaler~~ shall be entitled to
 139 receive as compensation for his or her services and expenses as
 140 such agent ~~or wholesaler~~ in affixing and accounting for the
 141 taxes represented by such stamps and to retain out of the moneys
 142 to be paid by the agent ~~or wholesaler~~ for such stamps a discount
 143 of 2 percent of the par value of any amount of stamps purchased
 144 during any fiscal year from July 1 through June 30 of the
 145 following year, provided the discount shall be computed on the
 146 basis of 24 cents per pack. No such discount shall be allowed to
 147 an agent ~~a dealer, vendor, or distributor~~ who sells or deals in
 148 any form of candy which resembles drug paraphernalia. Stamping
 149 locations approved by the division shall be responsible for



HB 1359

2003

150 computing the discount they receive pursuant to this paragraph,
151 and said computations shall be retained by the stamping location
152 for a period of 5 years and shall be available to the division.
153 All stamps purchased from the division under this part shall be
154 paid for in cash on delivery, except as hereinafter provided.

155 (b) Each agent appointed by the division to affix stamps
156 shall be authorized to purchase stamps by furnishing an
157 irrevocable letter of credit or unconditional guaranty contract
158 or by executing bond with a solvent surety company qualified to
159 do business in this state, in an amount of 110 percent of the
160 agent's estimated tax liability for 30 days, but not less than
161 \$2,000, conditioned upon said agent paying all taxes due the
162 state arising hereunder. This form of payment in lieu of cash on
163 delivery or its equivalent shall not preclude supplemental
164 purchases for cash. Payment for each month's liability shall be
165 due on or before the 10th day of the month following the month
166 in which the stamps were sold. Default in the aforesaid bonding
167 and payment provisions by any agent may result in the revocation
168 of his or her privilege to purchase stamps except for cash on
169 delivery for a period up to 12 months in the discretion of the
170 division.

171 (4) The division shall ~~may in its discretion~~ revoke the
172 authority of any agent failing to comply with the requirements
173 of this part or the rules and regulations promulgated hereunder
174 and such agent may in addition be punished in accordance with
175 the provisions of this part.

176 Section 3. Section 210.051, Florida Statutes, is created
177 to read:

178 210.051 Delivery sales; collection of taxes and other
179 verifications.--



HB 1359

2003

180 (1) No person shall make a delivery sale of cigarettes to
181 any individual who is under the legal minimum purchase age in
182 this state as set forth in s. 569.11. In addition to complying
183 with all of the applicable requirements of this section, each
184 person accepting a purchase order for a delivery sale shall also
185 comply with all other laws of this state generally applicable to
186 sales of cigarettes that occur entirely within this state,
187 including, but not limited to, those laws imposing excise taxes,
188 sales taxes, license requirements, and stamping requirements.

189 (2) No person shall mail, ship, or otherwise deliver
190 cigarettes in connection with a delivery sale unless, prior to
191 the first delivery sale to such consumer, such person:

192 (a) Obtains from the prospective consumer a certification
193 that includes a reliable confirmation that the consumer is at
194 least the legal minimum purchase age together with a statement
195 signed by the prospective consumer in writing that certifies the
196 prospective consumer's address and that the consumer is at least
197 18 years of age. Such statement shall also confirm that the
198 prospective consumer understands that signing another person's
199 name to such certification is illegal, the sale of cigarettes to
200 individuals under the legal minimum purchase age is illegal, and
201 the purchase and possession of cigarettes by individuals under
202 the legal minimum purchase age is illegal under the laws of this
203 state and that the prospective consumer wants to receive
204 mailings from a tobacco company.

205 (b) Makes a good faith effort to verify the information
206 contained in the certification provided by the prospective
207 consumer pursuant to paragraph (a) against a commercially
208 available database or obtains a photocopy or other image of a
209 valid, government-issued identification stating the date of



HB 1359

2003

210 birth or age of the individual placing the order.

211 (c) Provides to the prospective consumer, via electronic
212 mail or other means, a notice that meets the requirements of
213 subsection (3).

214 (d) In the case of an order for cigarettes pursuant to an
215 advertisement on the Internet, receives payment for the delivery
216 sale from the prospective consumer by a credit or debit card
217 that has been issued in such consumer's name, or by check.

218

219 Persons accepting purchase orders for delivery sales may request
220 that prospective consumers provide their electronic mail
221 addresses.

222 (3) The notice required under paragraph (2)(c) shall
223 include prominent and clearly legible statements that:

224 (a) Cigarette sales to consumers below the legal minimum
225 purchase age are illegal.

226 (b) Consist of one of the warnings set forth in section
227 4(a)(1) of the Federal Cigarette Labeling and Advertising Act,
228 15 U.S.C. s. 1333(a)(1), rotated on a quarterly basis.

229 (c) Sales of cigarettes are restricted to those consumers
230 who provide legal and verifiable proof of age.

231 (d) Cigarette sales are subject to tax under this chapter
232 and an explanation of how such tax has been, or is to be, paid
233 with respect to such delivery sale.

234 (4) Each person who mails, ships, or otherwise delivers
235 cigarettes in connection with a delivery sale shall:

236 (a) Include as part of the bill of lading or other
237 shipping documents a clear and conspicuous statement as follows:
238 "Cigarettes: Florida Law Prohibits Shipping to Individuals Under
239 18 and Requires the Payment of all Applicable Taxes."



HB 1359

2003

240 (b) Use a method of mailing, shipping, or delivery that
241 obligates the delivery service to require the consumer placing
242 the purchase order for the delivery sale, or another adult of
243 legal minimum purchase age residing at the consumer's address,
244 to sign to accept delivery of the shipping container and proof,
245 in the form of a valid, government-issued identification bearing
246 a photograph of the individual who signs to accept delivery of
247 the shipping container, that he or she is the addressee or
248 another adult of legal minimum purchase age residing at the
249 consumer's address. However, proof of the legal minimum purchase
250 age shall be required only if such individual appears to be
251 under 27 years of age.

252 (c) Provide to the delivery service retained for such
253 delivery sale evidence of full compliance with subsection (6).

254
255 If the person accepting a purchase order for a delivery sale
256 delivers the cigarettes without using a delivery service, such
257 person shall comply with all requirements of this section
258 applicable to a delivery service and shall be in violation of
259 the provisions of this section if he or she fails to comply with
260 any such requirement.

261 (5)(a) Prior to making delivery sales or mailing,
262 shipping, or otherwise delivering cigarettes in connection with
263 any such sales, every person shall file with the division a
264 statement setting forth such person's name, trade name, and the
265 address of such person's principal place of business and any
266 other place of business of such person.

267 (b) Not later than the 10th day of each month, each person
268 that has made a delivery sale or mailed, shipped, or otherwise
269 delivered cigarettes in connection with any such sale during the



HB 1359

2003

270 previous month shall file with the division a memorandum or a
271 copy of the invoice that provides for each such delivery sale:

272 1. The name and address of the consumer to whom such
273 delivery sale was made.

274 2. The brand or brands of the cigarettes that were sold in
275 such delivery sale.

276 3. The quantity of cigarettes that were sold in such
277 delivery sale.

278
279 However, any person who satisfies the requirements of 15 U.S.C
280 s. 376 shall be deemed to satisfy the requirements of this
281 subsection.

282 (6) Each person accepting a purchase order for a delivery
283 sale shall collect and remit to the division all taxes imposed
284 by the state with respect to such delivery sale, except that
285 such collection and remission shall not be required to the
286 extent such person has obtained proof, in the form of the
287 presence of applicable tax stamps or otherwise, that such taxes
288 already have been paid to the state.

289 (7)(a) Except as otherwise provided in this section, a
290 first violation of any provision of this section shall be
291 punishable by a fine of \$1,000 or 5 times the retail value of
292 the cigarettes involved, whichever is greater. A second or
293 subsequent violation of any provision of this section shall be
294 punishable by a fine of \$5,000 or 5 times the retail value of
295 the cigarettes involved, whichever is greater.

296 (b) Any person who knowingly violates any provision of
297 this section or who knowingly and falsely submits a
298 certification under subsection (2) in another person's name
299 commits a felony of the third degree, punishable as provided in



HB 1359

2003

300 s. 775.082, s. 775.083, or s. 775.084, and shall, for each such
 301 offense, be fined \$10,000 or 5 times the retail value of the
 302 cigarettes involved, whichever is greater.

303 (c) Any person failing to collect or remit to the division
 304 any tax required in connection with a delivery sale shall be
 305 assessed, in addition to any other penalty, a penalty of 5 times
 306 the retail value of the cigarettes involved.

307 (d) Any cigarettes sold or attempted to be sold in a
 308 delivery sale that do not meet the requirements of this section
 309 shall be forfeited to the state and destroyed. All fixtures,
 310 equipment, and other materials and personal property on the
 311 premises of any person who, with the intent to defraud the
 312 state, violates any of the requirements of this section shall be
 313 forfeited to the state.

314 (8) In addition to or in lieu of the penalties set forth
 315 in subsection (7), the Attorney General, the division, or any
 316 person who holds a valid permit under 26 U.S.C. s. 5712 may
 317 bring an action in the appropriate court in this state to
 318 prevent or restrain violations of this section by any person or
 319 any person controlling such person.

320 Section 4. Subsection (1) of section 210.06, Florida
 321 Statutes, is amended, and subsection (5) is added to said
 322 section, to read:

323 210.06 Affixation of stamps; presumption.--

324 (1) Every dealer within ~~or without~~ the state shall affix
 325 or cause to be affixed to such package or container of such
 326 cigarettes, such stamps as are required under this section
 327 within 72 hours after receipt of such products. Dealers outside
 328 this state shall affix such stamps before the shipment of
 329 cigarettes into this state, ~~evidencing the payment of the tax~~



HB 1359

2003

330 ~~imposed by virtue of this part before such cigarettes are~~
331 ~~offered for sale or use or consumed or before they are otherwise~~
332 ~~disposed of in the state.~~

333 (a) A tax stamp shall be applied to all cigarette packages
334 that are intended for sale or distribution to consumers subject
335 to the tax imposed under s. 210.02, including to cigarettes
336 subject to reduced state tax under s. 210.04(4)(b).

337 (b) Except as provided in paragraph (c), a tax-exempt
338 stamp shall be applied to all cigarette packages intended for
339 sale or distribution to consumers not subject to state tax under
340 s. 210.04.

341 (c) No stamp shall be applied to any cigarette package
342 exempt from tax under 26 U.S.C. s. 5701 that is distributed by a
343 manufacturer pursuant to federal regulations.

344 (d) Dealers may apply stamps only to cigarette packages
345 that they have received directly from a manufacturer or importer
346 of cigarettes who possesses a valid and current permit under s.
347 210.15.

348 (5) Except as provided in s. 210.09(1), no person, other
349 than a dealer that receives unstamped cigarette packages
350 directly from a cigarette manufacturer or importer in accordance
351 with this section and s. 210.085, shall hold or possess an
352 unstamped cigarette package. Dealers shall be permitted to set
353 aside, without application of stamps, only such part of the
354 dealer's stock that is identified for sale or distribution
355 outside this state. If a dealer maintains stocks of unstamped
356 cigarette packages, such unstamped packages shall be stored
357 separately from stamped product packages. No unstamped cigarette
358 packages shall be transferred by a dealer to another facility of



HB 1359

2003

359 the dealer within this state or to another person within this
 360 state.

361 Section 5. Section 210.085, Florida Statutes, is created
 362 to read:

363 210.085 Transactions only with permitted manufacturers,
 364 importers, dealers, and retail dealers.--A manufacturer,
 365 importer, or distributing agent may sell or distribute
 366 cigarettes to a person located or doing business within this
 367 state, including on any tribal lands located within this state,
 368 only if such person is a dealer with a valid, current permit
 369 under s. 210.15. A dealer may sell or distribute cigarettes to a
 370 person located or doing business within this state, including on
 371 any tribal lands located within the borders of this state, only
 372 if such person is a dealer or retail dealer with a valid,
 373 current permit under s. 210.15. A dealer may obtain cigarettes
 374 only from an importer, distributing agent, or dealer with a
 375 valid, current permit under s. 210.15. A retail dealer may
 376 obtain cigarettes only from a dealer with a valid, current
 377 permit under s. 210.15.

378 Section 6. Subsections (1) and (2) of section 210.09,
 379 Florida Statutes, are amended, and subsection (6) is added to
 380 said section, to read:

381 210.09 Records to be kept; reports to be made;
 382 examination.--

383 (1)(a) Every person who shall possess or transport any
 384 unstamped cigarettes upon the public highways, roads, or streets
 385 of the state, shall be required to have in his or her actual
 386 possession invoices or delivery tickets for such cigarettes. The
 387 absence of such invoices or delivery tickets shall be prima



HB 1359

2003

388 facie evidence that such person is a dealer in cigarettes in
389 this state and subject to the provisions of this part.

390 (b) Any person who ships unstamped cigarette packages into
391 this state other than to a dealer holding a valid and current
392 permit pursuant to s. 210.15 shall first file with the division
393 a notice of such shipment. This paragraph shall not apply to any
394 common or contract carrier that is transporting cigarettes
395 through this state to another location outside this state under
396 a proper bill of lading or freight bill, which states the
397 quantity, source, and destination of such cigarettes.

398 (c) In any case where the division or its duly authorized
399 agent, or any law enforcement officer of this state, has
400 knowledge or reasonable grounds to believe that any vehicle is
401 transporting cigarettes in violation of this part, the division,
402 such agent, or such law enforcement officer is authorized to
403 stop such vehicle and inspect the vehicle for contraband
404 cigarettes.

405 (2)(a) Except as otherwise provided in this subsection,
406 the division is authorized to prescribe and promulgate by rules
407 and regulations, which shall have the force and effect of the
408 law, such records to be kept and reports to be made to the
409 division by any distributing agent, wholesale dealer, retail
410 dealer, common carrier, or any other person handling,
411 transporting or possessing cigarettes for sale or distribution
412 within the state as may be necessary to collect and properly
413 distribute the taxes imposed by s. 210.02. All reports shall be
414 made on or before the 10th day of the month following the month
415 for which the report is made, unless the division by rule or
416 regulation shall prescribe that reports be made more often.

417 (b) Each dealer shall submit to the division monthly



HB 1359

2003

418 reports setting forth the following information, itemized or
419 submitted separately for each place of business of such dealer:

420 1. The quantities of cigarettes, by brand, on hand both at
421 the beginning and end of the reporting period.

422 2. The quantities of cigarettes, by brand and transaction,
423 that were received during the reporting period and the name and
424 address of each person from whom those products were received.

425 3. The quantities of cigarettes, by brand and transaction,
426 distributed or shipped during the reporting period, other than
427 sales directly to consumers, and the name and address of each
428 person to whom those products were distributed or shipped.

429 (c) Manufacturers and importers shipping cigarettes into
430 or within this state shall file a monthly report with the
431 division containing the information regarding such cigarettes
432 set forth in paragraph (b).

433 (d) The reports submitted pursuant to paragraphs (a), (b),
434 and (c) shall be further itemized to disclose the quantity of
435 reported cigarettes bearing tax stamps of this state, tax-exempt
436 stamps of this state, stamps of another state, and unstamped
437 cigarettes, itemized to show, if known, the portion of the
438 unstamped cigarettes that are intended for sale or distribution
439 in this state. Dealer reports shall include, if applicable, the
440 quantity of tax and tax-exempt stamps of this state that were
441 not affixed to cigarettes and that were on hand at the beginning
442 and end of the reporting period, the quantity of each type of
443 stamp of this state received during the reporting period, and
444 the quantity of each type of stamp of this state applied during
445 the reporting period.

446 (e) The division may issue regulations requiring such
447 additional information in the monthly reports as is necessary or



HB 1359

2003

448 appropriate for purposes of enforcing the provisions of this
449 part.

450 (f) Public access to reports submitted by permittees shall
451 be provided under the procedures established by chapter 119. In
452 no case, however, shall information about quantities of
453 cigarettes by brand be released to anyone other than those
454 permitted access under subsection (6).

455 (6) The United States Secretary of the Treasury or his or
456 her designee shall have access to records and reports required
457 by this section. The division may share such records and reports
458 with law enforcement officials of this state, the federal
459 government, or other states.

460 Section 7. Section 210.12, Florida Statutes, is amended to
461 read:

462 210.12 Seizures; forfeiture proceedings.--

463 (1) The state, acting by and through the division, shall
464 be authorized and empowered to seize, confiscate, and forfeit
465 ~~for the use and benefit of the state,~~ any cigarettes upon which
466 taxes payable hereunder may be unpaid or which are otherwise
467 held in violation of the requirements of this chapter, and also
468 any vending machine or receptacle in which ~~such~~ cigarettes upon
469 which taxes payable under this section may be unpaid are held
470 for sale, or any vending machine that does not have affixed
471 thereto the identification sticker required by the provisions of
472 s. 210.07, or which does not display at all times at least one
473 package of each brand of cigarettes located therein so the same
474 is clearly visible and arranged in such a manner that the
475 cigarette tax stamp or meter impression of the stamp affixed
476 thereto is clearly visible. Such seizure may be made by the



HB 1359

2003

477 division, its duly authorized representative, any sheriff or
478 deputy sheriff, or any police officer.

479 (2) All fixtures, equipment, and other materials and
480 personal property on the premises of any dealer or retail dealer
481 who, with intent to defraud the state, fails to keep or make any
482 record, return, report, or inventory, or keeps or makes any
483 false or fraudulent record, return, report, or inventory,
484 required by this part, refuses to pay any tax imposed by this
485 part, or attempts in any manner to evade or defeat the
486 requirements of this part shall be forfeited to the state.

487 (3) All cigarettes seized, confiscated, and forfeited to
488 the state under this part shall be destroyed.

489 (4)-(2) Subject to the requirements of subsection (3), the
490 procedure for seizure, the listing, appraisal, advertisement and
491 sale of the property seized, the bond of any claimant, the court
492 proceedings, if any, including the parties, personal service of
493 citation, and other personal services, the services by
494 publication, judicial sale, and all other proceedings for the
495 confiscation and forfeiture of the property for the nonpayment
496 of the taxes shall be regulated, conducted, governed and
497 controlled in the manner provided by chapter 562, relating to
498 the seizure, confiscation and forfeiture of property under the
499 Beverage Law which is incorporated herein by reference except to
500 the extent that such sections may conflict or be inconsistent
501 herewith.

502 (5)-(3) From the proceeds of any sale hereunder the
503 division shall collect the tax on the property, together with a
504 penalty of 50 percent thereof and the costs incurred in such
505 proceedings; the balance, if any, shall be payable by the



HB 1359

2003

506 division to the person in whose possession the said property was
507 found or as the court may direct.

508 ~~(6)~~(4) The distribution by the division of the proceeds of
509 the sale from any cigarettes or other property that may be
510 forfeited and confiscated hereunder shall, after the payment of
511 expenses of such forfeiture, be governed by the provisions of
512 this part.

513 ~~(7)~~(5) No sale shall be made hereunder to any person
514 except a licensed wholesale or retail dealer authorized to
515 engage in the sale of cigarettes under the laws of Florida. All
516 sales shall be made to the highest and best bidder for cash. ~~The~~
517 ~~division shall provide for the payment of any taxes payable upon~~
518 ~~any cigarettes sold hereunder before the same are delivered to~~
519 ~~any purchaser.~~

520 ~~(8)~~(6) The state attorney for the judicial circuit in
521 which such property was seized shall act as the attorney for the
522 division in such confiscation and forfeiture proceedings.

523 Section 8. Subsection (1) of section 210.15, Florida
524 Statutes, is amended to read:

525 210.15 Permits.--

526 (1)(a) Every person, firm, or corporation desiring to
527 engage in business deal in cigarettes as an importer, exporter,
528 a distributing agent, or wholesale dealer,~~or exporter~~ within
529 this state shall file with the Division of Alcoholic Beverages
530 and Tobacco an application for a cigarette permit for each place
531 of business located within this state or, in the absence of such
532 place of business in this state, for its principal place of
533 business, wherever located ~~with the Division of Alcoholic~~
534 ~~Beverages and Tobacco.~~ Every application for a cigarette permit
535 shall be made on forms furnished by the division and shall set



HB 1359

2003

536 forth the name under which the applicant transacts or intends to
537 transact business, the location of the applicant's place of
538 business within the state, if any, and such other information as
539 the division may require. If the applicant has or intends to
540 have more than one place of business dealing in cigarettes
541 within this state, the application shall state the location of
542 each place of business. If the applicant is an association, the
543 application shall set forth the names and addresses of the
544 persons constituting the association, and if a corporation, the
545 names and addresses of the principal officers thereof and any
546 other information prescribed by the division for the purpose of
547 identification. The application shall be signed and verified by
548 oath or affirmation by the owner, if a natural person, and in
549 the case of an association or partnership, members or partners
550 thereof, and in the case of a corporation, by an executive
551 officer thereof or by any person specifically authorized by the
552 corporation to sign the application, to which shall be attached
553 the written evidence of this authority. The cigarette permit for
554 a distributing agent shall be issued annually for which an
555 annual fee of \$5 shall be charged.

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

561 (c) Permits ~~The permit for a distributing agent, wholesale~~
562 ~~dealer, or exporter~~ shall be issued only to persons of good
563 moral character, who are not less than 18 years of age.
564 ~~Distributing agent, wholesale dealer, or exporter~~ Permits to
565 corporations shall be issued only to corporations whose officers



HB 1359

2003

566 are of good moral character and not less than 18 years of age.
567 There shall be no exemptions from the permit fees herein
568 provided to any persons, association of persons or corporation,
569 any law to the contrary notwithstanding.

570 (d) No distributing agent, wholesale dealer, or exporter
571 permit shall be issued, maintained, or renewed if the applicant,
572 its officers, or any person or persons owning directly or
573 indirectly, in the aggregate, more than 10 percent of the
574 ownership interests in the applicant:

575 1. Owes \$500 or more in delinquent cigarette taxes;
576 2. Had a cigarette importer, retail dealer, or dealer
577 permit revoked by the Division of Alcoholic Beverages and
578 Tobacco within the last 2 years;

579 3. Has been convicted of any offense against the cigarette
580 laws of any state, including, but not limited to, selling stolen
581 or counterfeit cigarettes, receiving stolen cigarettes, or
582 involvement in the smuggling or counterfeiting of cigarettes; or

583 4. Has been convicted in this state, any other state, or
584 the United States of any offense designated as a felony by such
585 state or the United States.

586
587 For the purposes of this subsection, to any person who has been
588 convicted within the past 5 years of any offense against the
589 cigarette laws of this state or who has been convicted in this
590 state, any other state, or the United States during the past 5
591 years of any offense designated as a felony by such state or the
592 United States, or to a corporation, any of whose officers have
593 been so convicted. the term "conviction" shall include an
594 adjudication of guilt on a plea of guilty or a plea of nolo



HB 1359

2003

595 | contendere, or the forfeiture of a bond when charged with a
596 | crime.

597 | (e)~~(d)~~ The division shall ~~may~~ refuse to issue a
598 | ~~distributing agent, wholesale, or exporter~~ permit to any person,
599 | firm, or corporation whose permit under the cigarette law has
600 | been revoked or to any corporation, an officer of which has had
601 | his or her permit under the cigarette law revoked, or to any
602 | person who is or has been an officer of a corporation whose
603 | permit has been revoked under the cigarette law. Any permit
604 | issued to a firm or corporation prohibited from obtaining such
605 | permit under the cigarette law shall ~~may~~ be revoked by the
606 | division.

607 | (f)~~(e)~~ Prior to an application for a distributing agent,
608 | wholesale dealer, or exporter permit being approved, the
609 | applicant shall file a set of fingerprints on forms provided by
610 | the division. The applicant shall also file a set of
611 | fingerprints for any person or persons interested directly or
612 | indirectly with the applicant in the business for which the
613 | permit is being sought, when so required by the division. If the
614 | applicant or any person interested with the applicant, either
615 | directly or indirectly, in the business for which the permit is
616 | sought shall be such a person as is within the definition of
617 | persons to whom a ~~distributing agent, wholesale dealer, or~~
618 | ~~exporter~~ permit shall be denied, then the application may be
619 | denied by the division. If the applicant is a partnership, all
620 | members of the partnership are required to file said
621 | fingerprints, or if a corporation, all principal officers of the
622 | corporation are required to file said fingerprints. The
623 | cigarette permit for a wholesale dealer or exporter shall be



HB 1359

2003

624 originally issued at a fee of \$100, which sum is to cover the
625 cost of the investigation required before issuing such permit.

626 (g)(f) The cigarette permits issued under this section
627 ~~permit for a wholesale dealer or exporter~~ shall be renewed from
628 year to year ~~as a matter of course,~~ at an annual cost of \$100,
629 on or before July 1, upon making application to the division and
630 upon payment of the annual renewal fee.

631 (h)(g) Permittees, by acceptance of their permits, agree
632 that their places of business or vehicles transporting
633 cigarettes shall always be subject to be inspected and searched
634 without a search warrant for the purpose of ascertaining that
635 all provisions of this part are complied with by authorized
636 employees of the division and also by sheriffs, deputy sheriffs,
637 and police officers during business hours or during any other
638 time such premises are occupied by the permittee or other
639 persons. ~~Retail cigarette dealers and manufacturers'~~
640 ~~representatives, by dealing in cigarettes, agree that their~~
641 ~~places of business or vehicles transporting cigarettes shall~~
642 ~~always be subject to inspection and search without a search~~
643 ~~warrant for the purpose of ascertaining that all provisions of~~
644 ~~this part are complied with by authorized employees of the~~
645 ~~division and also by sheriffs, deputy sheriffs, and police~~
646 ~~officers during business hours or other times when the premises~~
647 ~~are occupied by the retail dealer or manufacturers'~~
648 ~~representatives or other persons.~~

649 (i)(h) No retail sales of cigarettes may be made at a
650 location for which a wholesale dealer, distributing agent, or
651 exporter permit has been issued. The excise tax on sales made to
652 any traveling location, such as an itinerant store or industrial
653 caterer, shall be paid into the General Revenue Fund



HB 1359

2003

654 unallocated. Cigarettes may be purchased for retail purposes
655 only from a person holding a wholesale dealer permit. The
656 invoice for the purchase of cigarettes must show the place of
657 business for which the purchase is made and the cigarettes
658 cannot be transferred to any other place of business for the
659 purpose of resale.

660 Section 9. Subsections (2), (3), and (6) of section
661 210.18, Florida Statutes, are amended, and subsection (9) is
662 added to said section, to read:

663 210.18 Penalties for tax evasion; reports by sheriffs.--

664 (2) Any person ~~wholesale or retail dealer~~ who fails,
665 neglects, or refuses to comply with, or violates the provisions
666 of, this part or the rules and regulations promulgated by the
667 division under this part is guilty of a misdemeanor of the first
668 degree, punishable as provided in s. 775.082 or s. 775.083. Any
669 person ~~wholesale or retail dealer~~ who has been convicted of a
670 violation of any provision of the cigarette tax law and who is
671 thereafter convicted of a further violation of the cigarette tax
672 law is, upon conviction of such further offense, guilty of a
673 felony of the third degree, punishable as provided in s.
674 775.082, s. 775.083, or s. 775.084.

675 (3) Any person who falsely or fraudulently makes, forges,
676 alters, or counterfeits any stamp or impression die used in
677 meter machines prescribed by the division under the provisions
678 of this part; or, with intent to evade taxes, jams, tampers
679 with, or alters such a machine; or causes or procures to be
680 falsely or fraudulently made, forged, altered, or counterfeited
681 any such stamp or die; or knowingly and willfully utters,
682 purchases, passes, or tenders as true any such false, altered,
683 or counterfeited stamp or die impression; or, with the intent to



HB 1359

2003

684 defraud the state, fails to comply with any other requirement of
685 this chapter commits ~~is guilty of~~ a felony of the third degree,
686 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

687 ~~(6)(a) Every person, firm, or corporation, other than a~~
688 ~~licensee under the provisions of this part, who possesses,~~
689 ~~removes, deposits, or conceals, or aids in the possessing,~~
690 ~~removing, depositing, or concealing of, any unstamped cigarettes~~
691 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~
692 ~~second degree, punishable as provided in s. 775.082 or s.~~
693 ~~775.083. In lieu of the penalties provided in those sections,~~
694 ~~however, the person, firm, or corporation may pay the tax plus a~~
695 ~~penalty equal to the amount of the tax authorized under s.~~
696 ~~210.02 on the unstamped cigarettes.~~

697 (a)(b) Every person, firm, or corporation, other than a
698 licensee under the provisions of this part, who possesses,
699 removes, deposits, or conceals, or aids in the possessing,
700 removing, depositing, or concealing of, any unstamped cigarettes
701 in excess of 50 cartons is presumed to have knowledge that they
702 have not been taxed and is guilty of a felony of the third
703 degree, punishable as provided in s. 775.082, s. 775.083, or s.
704 775.084.

705 (b)(e) This section does not apply to a person possessing
706 not in excess of three cartons of such cigarettes purchased by
707 such possessor outside the state in accordance with the laws of
708 the place where purchased and brought into this state by such
709 possessor. The burden of proof that such cigarettes were
710 purchased outside the state and in accordance with the laws of
711 the place where purchased shall in all cases be upon the
712 possessor of such cigarettes.

713 (9) Notwithstanding any other provision of law, the sale



HB 1359

2003

714 or possession for sale of counterfeit cigarettes by a
715 manufacturer, importer, distributing agent, dealer, or retail
716 dealer shall result in the seizure of the product and related
717 machinery by the division or any law enforcement agency and
718 shall be punishable as follows:

719 (a)1. A first violation with a total quantity of less than
720 two cartons of cigarettes shall be punishable by a fine of
721 \$1,000 or five times the retail value of the cigarettes
722 involved, whichever is greater, or imprisonment not to exceed 5
723 years, or both.

724 2. A subsequent violation with a total quantity of less
725 than two cartons of cigarettes shall be punishable by a fine of
726 \$5,000 or five times the retail value of the cigarettes
727 involved, whichever is greater, or imprisonment not to exceed 5
728 years, or both, and shall also result in the revocation by the
729 division of the permit of the manufacturer, importer,
730 distributing agent, wholesale dealer, or retail dealer.

731 (b)1. A first violation with a total quantity of two or
732 more cartons of cigarettes shall be punishable by a fine of
733 \$2,000 or five times the retail value of the cigarettes
734 involved, whichever is greater, or imprisonment not to exceed 5
735 years, or both.

736 2. A subsequent violation with a quantity of two cartons
737 of cigarettes or more shall be punishable by a fine of \$50,000
738 or five times the retail value of the cigarettes involved,
739 whichever is greater, or imprisonment not to exceed 5 years, or
740 both, and shall also result in the revocation by the division of
741 the permit of the manufacturer, importer, distributing agent,
742 wholesale dealer, or retail dealer.

743



HB 1359

2003

744 For purposes of this subsection, counterfeit cigarettes include
745 cigarettes that have false manufacturing labels or packages of
746 cigarettes bearing counterfeit tax stamps. Any counterfeit
747 cigarettes seized by the division shall be destroyed.

748 Section 10. Section 210.181, Florida Statutes, is created
749 to read:

750 210.181 Civil penalties.--

751 (1) Whoever knowingly omits, neglects, or refuses to
752 comply with any duty imposed upon him or her by this part, or to
753 do, or cause to be done, any of the things required by this
754 part, or does anything prohibited by this part shall, in
755 addition to any other penalty provided in this part, be liable
756 to a fine of \$1,000 or five times the retail value of the
757 cigarettes involved, whichever is greater.

758 (2) Whoever fails to pay any tax imposed by this part at
759 the time prescribed by law or rules shall, in addition to any
760 other penalty provided in this part, be liable to a penalty of
761 five times the unpaid tax due.

762 Section 11. This act shall take effect upon becoming a
763 law.