

By Senator Posey

24-1248-03

1 A bill to be entitled
2 An act relating to the tax on tobacco products;
3 amending s. 210.01, F.S.; revising definitions;
4 amending s. 210.05, F.S.; revising authority of
5 the Division of Alcoholic Beverages and Tobacco
6 to prescribe certain stamps to certain persons;
7 deleting references to wholesalers of
8 cigarettes; requiring the division to revoke
9 certain licenses under certain circumstances;
10 creating s. 210.051, F.S.; regulating delivery
11 sales of cigarettes; prohibiting delivery of
12 cigarettes to certain persons under certain
13 circumstances; providing criteria and
14 requirements; requiring notice of certain
15 information; providing required procedures for
16 delivering cigarettes in a delivery sale;
17 requiring certain statements to be filed with
18 the division; requiring collection and
19 remittance of taxes to the division; providing
20 civil penalties for certain violations;
21 authorizing court actions to prevent or
22 restrain violations; amending s. 210.06, F.S.;
23 revising procedures, requirements,
24 restrictions, and limitations for the
25 application of stamps; providing limitations on
26 unstamped cigarette packages; creating s.
27 210.085, F.S.; limiting the sale or
28 distribution of cigarettes to certain permitted
29 entities; providing limitations on obtaining
30 cigarettes by certain persons; amending s.
31 210.09, F.S.; requiring division notice of

1 certain shipments; providing an exception;
2 authorizing the inspection of certain vehicles
3 for contraband cigarettes; requiring reports;
4 providing reporting requirements; providing for
5 public access to certain records; amending s.
6 210.12, F.S.; revising seizure and forfeiture
7 provisions; providing for forfeiture of certain
8 property under certain circumstances; providing
9 for the destruction of cigarettes under certain
10 circumstances; amending s. 210.15, F.S.;
11 requiring application for certain permits under
12 certain circumstances; providing limitations on
13 issuance of permits to certain persons;
14 requiring the division to refuse to issue or
15 revoke permits under certain circumstances;
16 deleting certain premises or vehicle inspection
17 and search provisions relating to retail
18 cigarette dealers' and manufacturers'
19 representatives; amending s. 210.18, F.S.;
20 revising criminal penalties for tax evasion;
21 deleting a criminal penalty relating to
22 unstamped cigarettes; providing for the seizure
23 of certain property and civil penalties for
24 sale or possession for sale of counterfeit
25 cigarettes; creating s. 210.181, F.S.;
26 providing civil penalties for certain actions;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Subsections (6), (7), and (14) of section
2 210.01, Florida Statutes, are amended and subsections
3 (19)-(25) are added to that section, to read:

4 210.01 Definitions.--When used in this part the
5 following words shall have the meaning herein indicated:

6 (6) "Wholesale dealer" means any person in or outside
7 of this state who sells cigarettes to retail dealers or other
8 persons for purposes of resale only, or any person who
9 operates more than one cigarette vending machine located in
10 more than one place of business. The term does not include a
11 manufacturer, export warehouse proprietor, or importer who
12 holds a permit under 26 U.S.C. s. 5712 and sells or
13 distributes cigarettes in this state only to dealers who are
14 agents and hold current permits under s. 210.15 or to an
15 export warehouse proprietor or another manufacturer.

16 (7) "Retail dealer" means any person in or outside of
17 this state other than a wholesale dealer engaged in the
18 business of selling cigarettes to consumers.

19 (14) "Distributing agent" means every person, firm or
20 corporation in this state who acts as an agent for any
21 manufacturer or importer ~~person, firm or corporation~~ outside
22 or inside the state by receiving cigarettes in interstate or
23 intrastate commerce and storing such cigarettes subject to
24 distribution or delivery upon order from said principal to
25 wholesale dealers and other distributing agents inside or
26 outside this state.

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

29 (a) The purchaser submits the order by a telephonic or
30 other method of voice transmission, mail or other delivery
31 service, or an on-line service; or

1 (b) The cigarettes are delivered by mail or a delivery
2 service. A sale of cigarettes is a delivery sale regardless of
3 whether the seller is located inside or outside this state. A
4 sale of cigarettes not for personal consumption to a person
5 who is a wholesale dealer or a retail dealer is not a delivery
6 sale. As used in this subsection, the term "delivery service"
7 means a person who is engaged in the commercial delivery of
8 letters, packages, or other containers.

9 (20) "Stamp" means the indicia required to be placed
10 on cigarette packages which evidences payment of the tax on
11 cigarettes under s. 210.02 or the required tax-exempt stamp
12 under s. 210.06(1)(b).

13 (21) "Importer" means any person who holds a permit
14 under 26 U.S.C. s. 5712 and imports into the United States,
15 directly or indirectly, finished cigarettes for sale or
16 distribution.

17 (22) "Manufacturer" means any person who holds a
18 permit under 26 U.S.C. s. 5712 and who manufactures,
19 fabricates, assembles, processes, or labels finished
20 cigarettes.

21 (23) "Mail" means the shipment of cigarettes through
22 the United States Postal Service.

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

25 (25) "Shipping documents" means bills of lading,
26 airbills, or other documents that evidence the undertaking by
27 a delivery service to deliver letters, packages, or other
28 containers.

29 Section 2. Subsections (2), (3), and (4) of section
30 210.05, Florida Statutes, are amended to read:

31 210.05 Preparation and sale of stamps; discount.--

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

14 (3)(a) The division may only appoint dealers in
15 cigarettes, ~~manufacturers of cigarettes,~~ within or without the
16 state as agent to buy or affix stamps to be used in paying the
17 tax herein imposed, but an agent shall at all times have the
18 right to appoint a person in his or her employ who is to affix
19 the stamps to any cigarettes under the agent's control ~~+~~
20 ~~provided, however, that any wholesale dealer in the state~~
21 ~~shall have the right to buy and affix such stamps.~~ Whenever
22 the division shall sell and deliver stamps to any ~~such~~ agent
23 ~~or wholesaler any such stamps,~~ such agent may ~~or wholesaler~~
24 ~~shall be entitled to receive as compensation for his or her~~
25 ~~services and expenses as such agent or wholesaler in~~ affixing
26 and accounting for the taxes represented by such stamps and
27 may ~~to~~ retain out of the moneys to be paid by the agent ~~or~~
28 ~~wholesaler~~ for such stamps a discount of 2 percent of the par
29 value of any amount of stamps purchased during any fiscal year
30 from July 1 through June 30 of the following year. However,
31 ~~provided~~ the discount shall be computed on the basis of 24

1 cents per pack. No ~~such~~ discount shall be allowed to an agent
2 ~~a dealer, vendor, or distributor~~ who sells or deals in any
3 form of candy that ~~which~~ resembles drug paraphernalia.
4 Stamping locations approved by the division shall be
5 responsible for computing the discount they receive pursuant
6 to this paragraph, and said computations shall be retained by
7 the stamping location for a period of 5 years and shall be
8 available to the division. All stamps purchased from the
9 division under this part shall be paid for in cash on
10 delivery, except as hereinafter provided.

11 (b) Each agent appointed by the division to affix
12 stamps shall be authorized to purchase stamps by furnishing an
13 irrevocable letter of credit or unconditional guaranty
14 contract or by executing bond with a solvent surety company
15 qualified to do business in this state, in an amount of 110
16 percent of the agent's estimated tax liability for 30 days,
17 but not less than \$2,000, conditioned upon said agent paying
18 all taxes due the state arising hereunder. This form of
19 payment in lieu of cash on delivery or its equivalent shall
20 not preclude supplemental purchases for cash. Payment for each
21 month's liability shall be due on or before the 10th day of
22 the month following the month in which the stamps were sold.
23 Default in the aforesaid bonding and payment provisions by any
24 agent may result in the revocation of his or her privilege to
25 purchase stamps except for cash on delivery for a period up to
26 12 months in the discretion of the division.

27 (4) The division may ~~in its discretion~~ revoke the
28 authority of any agent failing to comply with the requirements
29 of this part or the rules adopted ~~and regulations promulgated~~
30 hereunder and such agent may in addition be punished in
31 accordance with the provisions of this part.

1 Section 3. Section 210.051, Florida Statutes, is
2 created to read:

3 210.051 Delivery sales; collection of taxes and other
4 verifications.--

5 (1) A person may not make a delivery sale of
6 cigarettes to any individual who is under the legal minimum
7 purchase age in this state under s. 569.11. In addition to
8 complying with the applicable requirements of s. 569.11, a
9 person accepting a purchase order for a delivery sale must
10 comply with all other laws of this state generally applicable
11 to sales of cigarettes that occur entirely within this state,
12 including laws imposing excise taxes, sales taxes, license
13 requirements, and stamping requirements.

14 (2) A person may not mail, ship, or deliver cigarettes
15 in connection with a delivery sale unless, prior to the first
16 delivery sale to the consumer, such person:

17 (a) Obtains from the consumer a certification that
18 includes a reliable confirmation that the consumer is at least
19 the legal minimum purchase age and a statement signed by the
20 consumer that certifies the consumer's address and that the
21 consumer is at least 18 years of age. The statement must also
22 state that the consumer understands that signing another
23 person's name to the certification is illegal, that the sale
24 of cigarettes to individuals under the legal minimum purchase
25 age is illegal, that the purchase and possession of cigarettes
26 by individuals under the legal minimum purchase age is illegal
27 and that he or she wants to receive mailings from a tobacco
28 company.

29 (b) Makes a good-faith effort to verify the
30 information contained in the certification against a
31 commercially available database or obtains a photocopy or

1 other image of a valid, government-issued identification
2 stating the date of birth or age of the individual placing the
3 order.

4 (c) Provides to the consumer, via electronic mail or
5 other means, a notice that complies with subsection (3).

6 (d) In the case of an order placed pursuant to an
7 Internet advertisement, receives payment for the delivery sale
8 from the consumer by a credit or debit card that has been
9 issued in the consumer's name or by check.

10

11 Persons accepting purchase orders for delivery sales may
12 request that prospective consumers provide their electronic
13 mail addresses.

14 (3) The notice required under paragraph (2)(c) must
15 include prominent legible statements that:

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

18 (b) Contains one of the warnings in section 4(a)(1)
19 of the Federal Cigarette Labeling and Advertising Act, 15
20 U.S.C. s. 1333(a)(1), rotated on a quarterly basis.

21 (c) Sales of cigarettes are restricted to consumers
22 who provide legal and verifiable proof of age.

23 (d) Cigarette sales are subject to tax under this
24 chapter and an explanation of how such tax is paid.

25 (4) Each person who mails, ships, or delivers
26 cigarettes in connection with a delivery sale must:

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

1 (b) Use a method of mailing, shipping, or delivery
2 that requires the delivery service to have, the consumer or
3 another adult of legal minimum purchase age residing at the
4 consumer's address, sign to accept delivery of the shipping
5 container and show government-issued photo identification.
6 However, proof of the legal minimum purchase age is required
7 only if the individual appears to be under 27 years of age.

8 (c) Provide to the delivery service evidence of
9 compliance with subsection (6).

10
11 A person who accepts a purchase order for a delivery sale and
12 delivers the cigarettes without a delivery service, must
13 comply with the requirements applicable to a delivery service.

14 (5)(a) Prior to making delivery sales or mailing,
15 shipping, or delivering cigarettes in connection with any such
16 sales, a person must file with the division a statement
17 providing such person's name, trade name, principal place of
18 business address, and any other place of business.

19 (b) By the 10th day of each month, a person that has
20 made a delivery sale or mailed, shipped, or delivered
21 cigarettes pursuant to such sale during the previous month
22 shall file with the division a memorandum or a copy of the
23 invoice that provides for each delivery sale:

24 1. The name and address of the purchaser.

25 2. The quantity and brands of cigarettes that were
26 sold in each delivery sale.

27 (c) A person who complies with 15 U.S.C. s. 376 is
28 deemed to satisfy the requirements of this subsection.

29 (6) Each person accepting a purchase order for a
30 delivery sale shall collect and remit to the division all
31 taxes imposed by the state for such delivery sale, except to

1 the extent such person has obtained proof, in the form of
2 applicable tax stamps or otherwise, that the taxes have been
3 paid.

4 (7) This section does not apply to a delivery sale of
5 two cartons of cigarettes or less ordered from a retail dealer
6 in this state that is primarily engaged in in-store sales of
7 products other than cigarettes, the delivery is made to an
8 address within a 5-mile radius of the retail dealer, and the
9 price of all cigarettes in the delivery is less than 50
10 percent of the total price of goods in that delivery.

11 (8)(a) Except as otherwise provided in this section, a
12 first violation of this section is punishable by a fine of
13 \$1,000 or five times the retail value of the cigarettes
14 involved, whichever is greater. A second or subsequent
15 violation is punishable by a fine of \$5,000 or five times the
16 retail value of the cigarettes involved, whichever is greater.

17 (b) A person who knowingly violates this section or
18 who knowingly and falsely submits a certification under
19 subsection (2) in another person's name commits a felony of
20 the third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084, and shall, for each offense, be fined
22 \$10,000 or five times the retail value of the cigarettes
23 involved, whichever is greater.

24 (c) A person who does not collect and remit to the
25 division any tax required in connection with a delivery sale
26 shall be assessed, in addition to any other penalty, a penalty
27 of five times the retail value of the cigarettes involved.

28 (d) Any cigarettes sold or attempted to be sold in a
29 delivery sale that do not comply with this section shall be
30 forfeited to the state and destroyed. All fixtures, equipment,
31 or other materials and personal property on the premises of a

1 person who, with the intent to defraud the state, violates
2 this section shall be forfeited to the state.

3 (9) In addition to or in lieu of the penalties in
4 subsection (7), the Attorney General, the division, or any
5 person who holds a valid permit under 26 U.S.C. s. 5712 may
6 file suit to restrain violations of this section.

7 Section 4. Subsection (1) of section 210.06, Florida
8 Statutes, is amended, and subsection (5) is added to that
9 section, to read:

10 210.06 Affixation of stamps; presumption.--

11 (1) Every dealer within ~~or without~~ the state shall,
12 within 10 days after receiving cigarettes, affix or cause to
13 be affixed to such package or container of ~~such~~ cigarettes,
14 stamps required by this section. Dealers outside of this state
15 shall affix such stamps before shipping the cigarettes into
16 this state, evidencing the payment of the tax imposed by
17 ~~virtue of this part before such cigarettes are offered for~~
18 ~~sale or use or consumed or before they are otherwise disposed~~
19 ~~of in the state.~~

20 (a) A tax stamp shall be applied to all cigarette
21 packages that are intended for sale or distribution to
22 consumers, subject to the tax imposed under s. 210.02, or that
23 are otherwise required to bear stamps pursuant to this part.

24 (b) A stamp may not be applied to any cigarette
25 package that is exempt from tax under 26 U.S.C. s. 5701 which
26 is distributed by a manufacturer pursuant to federal
27 regulations.

28 (d) Dealers may apply stamps only to cigarette
29 packages that they have received directly from a manufacturer
30 or importer who possesses a current permit under 26 U.S.C. s.
31 5712.

1 (5) Except as provided in s. 210.09(1), a person,
2 other than a dealer that receives unstamped cigarette packages
3 directly from a cigarette manufacturer or importer pursuant to
4 this section and s. 210.085, may not possess an unstamped
5 cigarette package. Dealers may set aside, without application
6 of stamps, only stock that is identified for sale or
7 distribution outside this state. Unstamped packages must be
8 stored separately from stamped product packages and may not be
9 transferred to another facility of the dealer within this
10 state or to another person within this state.

11 Section 5. Section 210.085, Florida Statutes, is
12 created to read:

13 210.085 Transactions only with permitted
14 manufacturers, importers, dealers, and retail dealers.--A
15 manufacturer, importer, or distributing agent may sell or
16 distribute cigarettes to a person located or doing business
17 within this state, including on tribal lands in this state,
18 only if such person is a dealer holding a current permit under
19 s. 210.15. A dealer may sell or distribute cigarettes to a
20 person located or doing business in this state, including on
21 tribal lands in this state, only if such person is a dealer or
22 retail dealer with a current permit under s. 210.15. A dealer
23 may obtain cigarettes only from a manufacturer or importer who
24 possesses a current permit under 26 U.S.C. s. 5712 or from a
25 distributing agent or dealer with a valid, current permit
26 under s. 210.15. A retail dealer may obtain cigarettes only
27 from a dealer with a valid, current permit under s. 210.15.

28 Section 6. Subsection (1) of section 210.09, Florida
29 Statutes, is amended to read:

30 210.09 Records to be kept; reports to be made;
31 examination.--

1 (1)(a) Every person who shall possess or transport any
2 unstamped cigarettes upon the public highways, roads, or
3 streets of the state, must ~~shall be required to~~ have in his or
4 her actual possession invoices or delivery tickets for such
5 cigarettes. The absence of such invoices or delivery tickets
6 is ~~shall be~~ prima facie evidence that such person is a dealer
7 in cigarettes in this state and subject to the provisions of
8 this part.

9 (b) Before shipping unstamped cigarette packages into
10 this state to a person other than a dealer holding a current
11 permit pursuant to s. 210.15, a person must file with the
12 division a notice of such shipment. This paragraph does not
13 apply to a common or contract carrier that is transporting
14 cigarettes through this state to a location outside this state
15 under a bill of lading or freight bill, which states the
16 quantity, source, and destination of such cigarettes.

17 (c) A division agent or employee or a state law
18 enforcement officer who has knowledge or reasonable grounds to
19 believe that a vehicle is transporting cigarettes in violation
20 of this part, may stop such vehicle and inspect it for
21 contraband cigarettes.

22 Section 7. Section 210.12, Florida Statutes, is
23 amended to read:

24 210.12 Seizures; forfeiture proceedings.--

25 (1) The state, acting by and through the division, may
26 ~~shall be authorized and empowered to~~ seize, confiscate, and
27 forfeit ~~for the use and benefit of the state,~~ any cigarettes
28 upon which taxes payable hereunder may be unpaid or which are
29 held in violation of this chapter, and also any vending
30 machine or receptacle in which ~~such~~ cigarettes upon which
31 taxes due under this section are unpaid are held for sale, or

1 any vending machine that does not have affixed thereto the
2 identification sticker required by ~~the provisions of s.~~
3 210.07, or which does not display ~~at all times~~ at least one
4 package of each brand of cigarettes located therein so the
5 same is clearly visible and arranged so in such a manner that
6 the cigarette tax stamp or meter impression of the stamp
7 ~~affixed thereto~~ is clearly visible. Such seizure may be made
8 by the division, its duly authorized representative, any
9 sheriff or deputy sheriff, or any police officer.

10 (2) All fixtures, equipment, and other materials and
11 personal property on the premises of a dealer or retail dealer
12 who, with intent to defraud the state, does not maintain any
13 record, return, report, or inventory, or keeps or makes any
14 false or fraudulent record, return, report, or inventory,
15 required by this part, refuses to pay any tax imposed by this
16 part, or attempts to evade this part shall be forfeited to the
17 state and destroyed.

18 (3)(2) Subject to subsection (2), the procedure for
19 seizure, the listing, appraisal, advertisement and sale of the
20 property seized, the bond of any claimant, the court
21 proceedings, if any, including the parties, personal service
22 of citation, and other personal services, the services by
23 publication, judicial sale, and all other proceedings for the
24 confiscation and forfeiture of the property for the nonpayment
25 of the taxes shall be regulated, conducted, governed and
26 controlled in the manner provided by chapter 562, relating to
27 the seizure, confiscation and forfeiture of property under the
28 Beverage Law which is incorporated herein by reference except
29 to the extent that such sections may conflict or be
30 inconsistent herewith.

31

1 (4)~~(3)~~ From the proceeds of any sale hereunder the
2 division shall collect the tax on the property, together with
3 a penalty of 50 percent thereof and the costs incurred in such
4 proceedings; the balance, if any, shall be payable by the
5 division to the person in whose possession the said property
6 was found or as the court may direct.

7 (5)~~(4)~~ The distribution by the division of the
8 proceeds of the sale from any cigarettes or other property
9 that may be forfeited and confiscated hereunder shall, after
10 the payment of expenses of such forfeiture, be governed by the
11 provisions of this part.

12 (6)~~(5)~~ No sale shall be made hereunder to any person
13 except a licensed wholesale or retail dealer authorized to
14 engage in the sale of cigarettes under the laws of Florida.
15 All sales shall be made to the highest and best bidder for
16 cash. ~~The division shall provide for the payment of any taxes~~
17 ~~payable upon any cigarettes sold hereunder before the same are~~
18 ~~delivered to any purchaser.~~

19 (7)~~(6)~~ The state attorney for the judicial circuit in
20 which such property was seized shall act as the attorney for
21 the division in such confiscation and forfeiture proceedings.

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

24 210.15 Permits.--

25 (1)(a) Every person, firm, or corporation desiring to
26 engage in business ~~deal in cigarettes~~ as a distributing agent,
27 wholesale dealer, or exporter within this state shall file an
28 application for a cigarette permit for each place of business
29 in this state, or for its principal place of business if it
30 has no place of business in this state, with the Division of
31 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
22 shall be issued annually for which an annual fee of \$5 shall
23 be 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) Permits ~~The permit for a distributing agent,~~
30 ~~wholesale dealer, or exporter~~ shall be issued only to persons
31 of good moral character, who are not less than 18 years of

1 age. ~~Distributing agent, wholesale dealer, or exporter~~
2 Permits to corporations shall be issued only to corporations
3 whose officers are of good moral character and not less than
4 18 years of age. There are ~~shall be~~ no exemptions from the
5 permit fees ~~herein~~ provided to any persons, association of
6 persons or corporation, any law to the contrary
7 notwithstanding.

8 (d) A permit may not ~~No distributing agent, wholesale~~
9 ~~dealer, or exporter permit shall~~ be issued, maintained, or
10 renewed if the applicant or its officers or any person having,
11 directly or indirectly, in the aggregate, more than a
12 10-percent ownership interest in the applicant:

13 1. Owes \$500 or more in delinquent cigarette taxes;
14 2. Has had a cigarette importer, retail dealer, or
15 dealer permit revoked by the division within the last 2 years;
16 3. Has been convicted of any violation of the
17 cigarette laws of any state, including, but not limited to,
18 selling stolen or counterfeit cigarettes, receiving stolen
19 cigarettes, or involvement in smuggling or counterfeiting
20 cigarettes; or

21 4. Has been convicted in any state or federal court of
22 any offense designated as a felony in such state court. ~~to any~~
23 ~~person who has been convicted within the past 5 years of any~~
24 ~~offense against the cigarette laws of this state or who has~~
25 ~~been convicted in this state, any other state, or the United~~
26 ~~States during the past 5 years of any offense designated as a~~
27 ~~felony by such state or the United States, or to a~~
28 ~~corporation, any of whose officers have been so convicted. The~~
29 term "conviction", for purposes of this subsection, includes
30 ~~shall include~~ an adjudication of guilt on a plea of guilty or
31

1 a plea of nolo contendere, or the forfeiture of a bond when
2 charged with a crime.

3 (e)~~(d)~~ The division shall ~~may~~ refuse to issue a
4 ~~distributing agent, wholesale, or exporter~~ permit to any
5 person, firm, or corporation whose permit under the cigarette
6 law has been revoked or to any corporation, an officer of
7 which has had his or her permit under the cigarette law
8 revoked, or to any person who is or has been an officer of a
9 corporation whose permit has been revoked under the cigarette
10 law. Any permit issued to a firm or corporation prohibited
11 from obtaining such permit under the cigarette law shall ~~may~~
12 be revoked by the division.

13 (f)~~(e)~~ Prior to an application for a distributing
14 agent, wholesale dealer, or exporter permit being approved,
15 the applicant shall file a set of fingerprints on forms
16 provided by the division. The applicant shall also file a set
17 of fingerprints for any person or persons interested directly
18 or indirectly with the applicant in the business for which the
19 permit is being sought, when so required by the division. If
20 the applicant or any person interested with the applicant,
21 either directly or indirectly, in the business for which the
22 permit is sought ~~shall be such a person as~~ is within the
23 definition of persons to whom a ~~distributing agent, wholesale~~
24 ~~dealer, or exporter~~ permit must ~~shall~~ be denied, ~~then~~ the
25 application may be denied by the division. If the applicant
26 is a partnership, all members of the partnership are required
27 to file ~~said~~ fingerprints, or if a corporation, all principal
28 officers of the corporation are required to file ~~said~~
29 fingerprints. The cigarette permit for a wholesale dealer or
30 exporter shall be originally issued at a fee of \$100, ~~which~~
31

1 ~~sum is~~ to cover the cost of the investigation required ~~before~~
2 ~~issuing such permit.~~

3 (g)(f) The permits issued under this section ~~cigarette~~
4 ~~permit for a wholesale dealer or exporter~~ shall be renewed
5 from year to year ~~as a matter of course,~~ at an annual cost of
6 \$100, on or before July 1, upon making application to the
7 division and ~~upon~~ payment of the ~~annual~~ renewal fee.

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 not be made
27 at a location for which a wholesale dealer, distributing
28 agent, or exporter permit has been issued. The excise tax on
29 sales made to any traveling location, such as an itinerant
30 store or industrial caterer, shall be paid into the General
31 Revenue Fund unallocated. Cigarettes may be purchased for

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

6 Section 9. Subsections (2) and (3) of section 210.18,
7 Florida Statutes, are amended and subsection (9) is added to
8 that section, to read:

9 210.18 Penalties for tax evasion; reports by
10 sheriffs.--

11 (2) Any person ~~wholesale or retail dealer~~ who does not
12 ~~fails, neglects, or refuses to~~ comply with, or violates the
13 ~~provisions of,~~ this part or the rules adopted and regulations
14 ~~promulgated~~ by the division under this part is guilty of a
15 misdemeanor of the first degree, punishable as provided in s.
16 775.082 or s. 775.083. Any person ~~wholesale or retail dealer~~
17 who has been convicted of a violation of any provision of the
18 cigarette tax law and who is thereafter convicted of a further
19 violation of the cigarette tax law is, upon conviction of such
20 further offense, guilty of a felony of the third degree,
21 punishable as provided in s. 775.082, s. 775.083, or s.
22 775.084.

23 (3) Any person who falsely or fraudulently makes,
24 forges, alters, or counterfeits any stamp or impression die
25 used in meter machines prescribed by the division under ~~the~~
26 ~~provisions of~~ this part; or, with intent to evade taxes, jams,
27 tampers with, or alters such a machine; or causes or procures
28 to be falsely or fraudulently made, forged, altered, or
29 counterfeited any such stamp or die; or knowingly and
30 willfully utters, purchases, passes or tenders as true any
31 ~~such~~ false, altered, or counterfeited stamp or die impression;

1 or with the intent to defraud the state, does not comply with
2 a requirement of this chapter, commits ~~is guilty of~~ a felony
3 of the third degree, punishable as provided in s. 775.082, s.
4 775.083, or s. 775.084.

5 (9) Notwithstanding any other provision of law, the
6 sale or possession for sale of counterfeit cigarettes by any
7 person shall result in the seizure of the product and related
8 machinery by the division or any law enforcement agency and is
9 punishable as follows:

10 (a)1. A first violation with a total quantity of less
11 than two cartons of cigarettes, or the equivalent amount of
12 other cigarettes, is punishable by a fine not to exceed \$1,000
13 or five times the retail value of the cigarettes, whichever is
14 greater, or imprisonment for a term not to exceed 5 years, or
15 both.

16 2. A subsequent violation with a total quantity of
17 less than two cartons of cigarettes, or the equivalent amount
18 of other cigarettes, is punishable by a fine not to exceed
19 \$5,000 or five times the retail value of the cigarettes,
20 whichever is greater, or imprisonment for a term not to exceed
21 5 years, or both, and shall also result in the revocation by
22 the division of the permit of the permittee.

23 (b)1. A first violation with a total quantity of two
24 or more cartons of cigarettes, or the equivalent amount of
25 other cigarettes, is punishable by a fine not to exceed \$2,000
26 or five times the retail value of the cigarettes, whichever is
27 greater, or imprisonment for a term not to exceed 5 years, or
28 both.

29 2. A subsequent violation with a quantity of two
30 cartons of cigarettes or more, or the equivalent amount of
31 other cigarettes, is punishable by a fine not to exceed

1 \$50,000 or five times the retail value of the cigarettes,
2 whichever is greater, or imprisonment not to exceed a term of
3 5 years, or both, and shall also result in the revocation by
4 the division of the permit of the permittee.

5
6 As used in this subsection, the term "counterfeit cigarettes"
7 includes cigarettes that have false manufacturing labels,
8 cigarette packs without tax stamps or with counterfeit tax
9 stamps or a combination thereof. Counterfeit cigarettes seized
10 by the division shall be destroyed.

11 Section 10. Section 210.181, Florida Statutes, is
12 created to read:

13 210.181 Civil penalties.--

14 (1) A person who knowingly omits, neglects, or refuses
15 to comply with any duty imposed upon him or her by this part,
16 or to do, or cause to be done, any of the things required by
17 this part, or does anything prohibited by this part shall, in
18 addition to any other penalty, be liable for a fine of \$1,000
19 or five times the retail value of the cigarettes involved,
20 whichever is greater.

21 (2) A person who does not pay a tax imposed by this
22 part at the time prescribed by law or rule is, in addition to
23 any other penalty, liable for a penalty of five times the
24 unpaid tax due.

25 Section 11. This act shall take effect upon becoming a
26 law.

27
28 *****

29 SENATE SUMMARY

30 Revises provisions relating to cigarette taxes. Regulates
31 delivery sales of cigarettes and establishes procedures
for such deliveries. Revises provisions relative to tax
stamps. (See bill for details.)