

CHAMBER ACTION

1 The Committee on Business Regulation recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to transportation and sale of cigarettes;  
7 amending s. 210.01, F.S.; revising and providing  
8 definitions; amending s. 210.05, F.S.; providing stamp  
9 requirements for cigarettes in transport; providing stamp  
10 exceptions for certain cigarettes; providing  
11 nonapplicability of stamp requirements for certain  
12 cigarettes; requiring transporters of certain cigarettes  
13 to submit certain reports; requiring such transporters to  
14 make certain certifications under oath and subject to  
15 penalties for perjury; providing a definition; providing  
16 applicability; amending s. 210.06, F.S.; revising  
17 requirements for and limitations on the affixation of  
18 stamps; providing requirements with respect to receipt,  
19 possession, storage, and transport of unstamped cigarette  
20 packages; creating s. 210.085, F.S.; requiring  
21 manufacturers, importers, distributing agents, dealers,  
22 and retail dealers to hold a current, valid permit to  
23 sell, distribute, or receive cigarettes; amending s.

HB 1459

2004  
CS

24 210.09, F.S.; providing notice and filing guidelines for  
 25 certain persons shipping unstamped cigarette packages;  
 26 authorizing certain law enforcement officials to inspect  
 27 certain shipping vehicles; amending s. 210.12, F.S.;  
 28 authorizing the state to claim certain property and  
 29 materials from certain dealers and retailers who attempt  
 30 to defraud the state; authorizing the destruction of  
 31 certain cigarettes; amending s. 210.15, F.S.; providing  
 32 criteria for permit application; prohibiting issuance,  
 33 maintenance, or renewal of certain permits for certain  
 34 applicants; providing guidelines for permit application  
 35 denial; amending s. 210.18, F.S.; expanding the group of  
 36 violators subject to criminal liability; prohibiting the  
 37 sale or possession for sale of counterfeit cigarettes;  
 38 providing penalties; creating s. 210.181, F.S.; providing  
 39 civil penalties for failure to comply with certain duties  
 40 or pay certain taxes; providing an effective date.

41

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

43

44 Section 1. Subsections (6) and (7) of section 210.01,  
 45 Florida Statutes, are amended, and subsections (19) through (23)  
 46 are added to said section, to read:

47 210.01 Definitions.--When used in this part the following  
 48 words shall have the meaning herein indicated:

49 (6) "Wholesale dealer" means any person located inside or  
 50 outside this state who sells cigarettes to retail dealers or  
 51 other persons for purposes of resale only, or any person who

HB 1459

2004  
CS

52 operates more than one cigarette vending machine located in more  
 53 than one place of business. Such term shall not include any  
 54 cigarette manufacturer, export warehouse proprietor, or importer  
 55 with a valid permit under 26 U.S.C. s. 5712 if such person sells  
 56 or distributes cigarettes in this state only to dealers who are  
 57 agents and who hold valid and current permits under s. 210.15 or  
 58 to an export warehouse proprietor or another manufacturer.

59 (7) "Retail dealer" means any person located inside or  
 60 outside this state other than a wholesale dealer engaged in the  
 61 business of selling cigarettes, including persons licensed  
 62 pursuant to s. 569.003.

63 (19) "Stamp" or "stamps" means the indicia required to be  
 64 placed on cigarette packages that evidences payment of the tax  
 65 on cigarettes under s. 210.02.

66 (20) "Importer" means any person with a valid permit under  
 67 26 U.S.C. s. 5712 who imports into the United States, directly  
 68 or indirectly, a finished cigarette for sale or distribution.

69 (21) "Manufacturer" means any person with a valid permit  
 70 under 26 U.S.C. s. 5712 who manufactures, fabricates, assembles,  
 71 processes, or labels a finished cigarette.

72 (22) "Counterfeit cigarettes" means cigarettes that have  
 73 false manufacturing labels, tobacco product packs without tax  
 74 stamps or with counterfeit tax stamps, or any combination  
 75 thereof.

76 (23) "Brand family" means all styles of cigarettes sold  
 77 under the same trademark and differentiated from one another by  
 78 means of additional modifiers or descriptors, including, but not  
 79 limited to, "menthol," "lights," "kings," and "100s," and

HB 1459

2004  
CS

80 includes any brand name used alone or in conjunction with any  
 81 other word, trademark, logo, symbol, motto, selling message,  
 82 recognizable pattern of colors, or any other indicia of product  
 83 identification identical or similar to, or identifiable with, a  
 84 previously known brand of cigarettes.

85 Section 2. Subsection (6) is added to section 210.05,  
 86 Florida Statutes, to read:

87 210.05 Preparation and sale of stamps; discount.--

88 (6)(a) A person may not transport or cause to be  
 89 transported from this state cigarettes for sale in another state  
 90 without first affixing to the cigarettes the stamp required by  
 91 the state in which the cigarettes are to be sold or paying any  
 92 other excise tax on the cigarettes imposed by the state in which  
 93 the cigarettes are to be sold.

94 (b) A person may not affix to cigarettes the stamp  
 95 required by another state or pay any other excise tax on the  
 96 cigarettes imposed by another state if the other state prohibits  
 97 stamps from being affixed to the cigarettes, prohibits the  
 98 payment of any other excise tax on the cigarettes, or prohibits  
 99 the sale of the cigarettes.

100 (c) The requirements of paragraphs (a) and (b) do not  
 101 apply to cigarettes with respect to which the manufacturer or  
 102 importer is either a Participating Manufacturer as defined in  
 103 section II(jj) of the Master Settlement Agreement or is in full  
 104 compliance with the Qualifying Statute as defined in section  
 105 IX(d)(2)(E) of the Master Settlement Agreement of the state in  
 106 which the cigarettes are to be sold. An exemption pursuant to  
 107 this paragraph may only be asserted with respect to cigarettes

HB 1459

2004  
CS

108 that, in the case of a Participating Manufacturer, are deemed to  
 109 be its cigarettes for purposes of calculating its payments under  
 110 the Master Settlement Agreement for the relevant year in the  
 111 volumes and shares determined pursuant to the Master Settlement  
 112 Agreement and, in the case of any other manufacturer or  
 113 importer, are deemed to be its cigarettes for purposes of the  
 114 applicable Qualifying Statute. For purposes of this paragraph,  
 115 the term "Master Settlement Agreement" means the settlement  
 116 agreement and related documents entered into in 1998 by 46  
 117 states and leading United States tobacco manufacturers. A person  
 118 asserting an exemption pursuant to this paragraph shall submit  
 119 the report required by paragraph (d) and shall certify as  
 120 provided therein.

121 (d) On or before the 10th day of each month, a person who  
 122 transports or causes to be transported from this state  
 123 cigarettes for sale in another state shall submit to the  
 124 division a report identifying the quantity and brand family of  
 125 each brand of the cigarettes transported or caused to be  
 126 transported in the preceding calendar month and the name and  
 127 address of each recipient of the cigarettes. Such person shall  
 128 also certify under oath and subject to the penalties of perjury  
 129 that:

130 1. The stamps required by paragraph (a) have been affixed  
 131 in accordance with said paragraph or that such stamps were not  
 132 affixed per paragraph (b); or

133 2. The requirements of paragraph (c) have been satisfied.

134 (e) For purposes of this subsection, the term "person"  
 135 means an individual, partnership, committee, association,

HB 1459

2004  
CS

136 corporation, or any other organization or group of persons.  
 137 "Person" does not include any common or contract carrier or any  
 138 public warehouse that is not owned, in whole or in part,  
 139 directly or indirectly, by the person transporting the  
 140 cigarettes or causing the transport to be made.

141 (f) Nothing in this subsection shall be deemed to  
 142 authorize the possession or transportation of cigarettes by any  
 143 person not so authorized by another provision of this part.

144 Section 3. Subsection (1) of section 210.06, Florida  
 145 Statutes, is amended, and subsection (5) is added to said  
 146 section, to read:

147 210.06 Affixation of stamps; presumption.--

148 (1) Every dealer within ~~or without~~ the state shall affix  
 149 or cause to be affixed to such package or container of such  
 150 cigarettes such, stamps as are required under this section  
 151 within 10 days after receipt of such products. Dealers outside  
 152 this state shall affix such stamps before the shipment of  
 153 cigarettes into this state, ~~evidencing the payment of the tax~~  
 154 ~~imposed by virtue of this part before such cigarettes are~~  
 155 ~~offered for sale or use or consumed or before they are otherwise~~  
 156 ~~disposed of in the state.~~

157 (a) A tax stamp shall be applied to all cigarette packages  
 158 intended for sale or distribution to consumers subject to the  
 159 tax imposed under s. 210.02, except as otherwise provided in  
 160 this part.

161 (b) No stamp shall be applied to any cigarette package  
 162 exempt from tax under 26 U.S.C. s. 5704 that is distributed by a  
 163 manufacturer pursuant to federal regulations.

HB 1459

2004  
CS

164       (c) Dealers may apply stamps only to cigarette packages  
 165 received directly from a manufacturer or importer of cigarettes  
 166 who possesses a valid and current permit under 26 U.S.C. s.  
 167 5712.

168       (5) Except as provided in s. 210.09(1), no person, other  
 169 than a dealer that receives unstamped cigarette packages  
 170 directly from a cigarette manufacturer or importer in accordance  
 171 with this section and s. 210.085, shall hold or possess an  
 172 unstamped cigarette package. Dealers shall be permitted to set  
 173 aside, without application of stamps, only such part of the  
 174 dealer's stock that is identified for sale or distribution  
 175 outside this state. If a dealer maintains stocks of unstamped  
 176 cigarette packages, such unstamped packages shall be stored  
 177 separately from stamped product packages. No unstamped cigarette  
 178 packages shall be transferred by a dealer to another facility of  
 179 the dealer within this state or to another person within this  
 180 state.

181       Section 4. Section 210.085, Florida Statutes, is created  
 182 to read:

183       210.085 Transactions only with permitted manufacturers,  
 184 importers, distributing agents, dealers, and retail dealers.--A  
 185 manufacturer, importer, or distributing agent may sell or  
 186 distribute cigarettes to a person located or doing business  
 187 within this state, including on any tribal lands located within  
 188 the borders of this state, only if such person is a dealer with  
 189 a valid, current permit under s. 210.15. A dealer may sell or  
 190 distribute cigarettes to a person located or doing business  
 191 within this state, including on any tribal lands located within

HB 1459

2004  
CS

192 the borders of this state, only if such person is a dealer or  
 193 retail dealer with a valid, current permit under s. 569.003. A  
 194 dealer may obtain cigarettes only from a manufacturer or  
 195 importer who possesses a valid, current permit under 26 U.S.C.  
 196 s. 5712 or from a distributing agent or dealer with a valid,  
 197 current permit under s. 210.15. A retail dealer may obtain  
 198 cigarettes only from a manufacturer or dealer with a valid,  
 199 current permit under s. 210.15.

200 Section 5. Subsection (1) of section 210.09, Florida  
 201 Statutes, is amended to read:

202 210.09 Records to be kept; reports to be made;  
 203 examination.--

204 (1)(a) Every person who shall possess or transport any  
 205 unstamped cigarettes upon the public highways, roads, or streets  
 206 of the state, shall be required to have in his or her actual  
 207 possession invoices or delivery tickets for such cigarettes. The  
 208 absence of such invoices or delivery tickets shall be prima  
 209 facie evidence that such person is a dealer in cigarettes in  
 210 this state and subject to the provisions of this part.

211 (b) Any person who ships unstamped cigarette packages into  
 212 this state other than to a dealer holding a valid, current  
 213 permit pursuant to s. 210.15 shall first file with the division  
 214 a notice of such shipment. This paragraph shall not apply to any  
 215 common or contract carrier that is transporting cigarettes  
 216 through this state to another location outside this state under  
 217 a proper bill of lading or freight bill that states the  
 218 quantity, source, and destination of such cigarettes.

HB 1459

2004  
CS

219       (c) In any case in which the division or its duly  
 220 authorized agent, or any law enforcement officer of this state,  
 221 has knowledge or reasonable grounds to believe that any vehicle  
 222 is transporting cigarettes in violation of this part, the  
 223 division, such agent, or such law enforcement officer is  
 224 authorized to stop such vehicle and inspect the vehicle for  
 225 contraband cigarettes.

226       Section 6. Subsection (1) of section 210.12, Florida  
 227 Statutes, is amended, subsections (2) through (6) of said  
 228 section are renumbered as subsections (4) through (8),  
 229 respectively, and new subsections (2) and (3) are added to said  
 230 section, to read:

231       210.12 Seizures; forfeiture proceedings.--

232       (1) The state, acting by and through the division, shall  
 233 be authorized and empowered to seize, confiscate, and forfeit  
 234 ~~for the use and benefit of the state,~~ any cigarettes upon which  
 235 taxes payable hereunder may be unpaid or that are otherwise held  
 236 in violation of the requirements of this chapter, and also any  
 237 vending machine or receptacle in which ~~such~~ cigarettes upon  
 238 which taxes have not been paid are held for sale, or any vending  
 239 machine that does not have affixed thereto the identification  
 240 sticker required by the provisions of s. 210.07, or which does  
 241 not display at all times at least one package of each brand of  
 242 cigarettes located therein so the same is clearly visible and  
 243 arranged in such a manner that the cigarette tax stamp or meter  
 244 impression of the stamp affixed thereto is clearly visible. Such  
 245 seizure may be made by the division, its duly authorized

HB 1459

2004  
CS

246 representative, any sheriff or deputy sheriff, or any police  
247 officer.

248 (2) All fixtures, equipment, and other materials and  
249 personal property on the premises of any dealer or retail dealer  
250 who, with intent to defraud the state, fails to keep or make any  
251 record, return, report, or inventory required by this part;  
252 keeps or makes any false or fraudulent record, return, report,  
253 or inventory required by this part; refuses to pay any tax  
254 imposed by this part; or attempts in any manner to evade or  
255 defeat the requirements of this part shall be forfeited to the  
256 state.

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

259 Section 7. Subsection (1) of section 210.15, Florida  
260 Statutes, is amended to read:

261 210.15 Permits.--

262 (1)(a) Every person, firm, or corporation desiring to  
263 engage in business as a manufacturer, importer, exporter,  
264 distributing agent, or wholesale dealer of cigarettes ~~deal in~~  
265 ~~cigarettes as a distributing agent, wholesale dealer, or~~  
266 ~~exporter~~ within this state shall file with the division an  
267 application for a cigarette permit for each place of business  
268 located within this state or, in the absence of such place of  
269 business in this state, for wherever its principal place of  
270 business is located ~~with the Division of Alcoholic Beverages and~~  
271 ~~Tobacco~~. Every application for a cigarette permit shall be made  
272 on forms furnished by the division and shall set forth the name  
273 under which the applicant transacts or intends to transact

HB 1459

2004  
CS

274 business, the location of the applicant's place of business  
 275 within the state, if any, and such other information as the  
 276 division may require. If the applicant has or intends to have  
 277 more than one place of business dealing in cigarettes within  
 278 this state, the application shall state the location of each  
 279 place of business. If the applicant is an association, the  
 280 application shall set forth the names and addresses of the  
 281 persons constituting the association, and if a corporation, the  
 282 names and addresses of the principal officers thereof and any  
 283 other information prescribed by the division for the purpose of  
 284 identification. The application shall be signed and verified by  
 285 oath or affirmation by the owner, if a natural person, and in  
 286 the case of an association or partnership, members or partners  
 287 thereof, and in the case of a corporation, by an executive  
 288 officer thereof or by any person specifically authorized by the  
 289 corporation to sign the application, to which shall be attached  
 290 the written evidence of this authority. The cigarette permit for  
 291 a distributing agent shall be issued annually for which an  
 292 annual fee of \$5 shall be charged.

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

298 (c) Permits ~~The permit for a distributing agent, wholesale~~  
 299 ~~dealer, or exporter~~ shall be issued only to persons of good  
 300 moral character, who are not less than 18 years of age.  
 301 ~~Distributing agent, wholesale dealer, or exporter~~ Permits to

HB 1459

2004  
CS

302 corporations shall be issued only to corporations whose officers  
 303 are of good moral character and not less than 18 years of age.  
 304 There shall be no exemptions from the permit fees herein  
 305 provided to any persons, association of persons, or corporation,  
 306 any law to the contrary notwithstanding.

307 (d) ~~No distributing agent, wholesale dealer, or exporter~~  
 308 ~~permit shall be issued, maintained, or renewed if the applicant,~~  
 309 ~~its officers, or any person or persons owning directly or~~  
 310 ~~indirectly, in the aggregate, more than 10 percent of the~~  
 311 ~~ownership interests in the applicant:~~

- 312 1. Owes \$500 or more in delinquent cigarette taxes;
- 313 2. Had a cigarette importer, retail dealer, or dealer  
 314 permit revoked by the division within the previous 2 years;
- 315 3. Has been convicted of selling stolen or counterfeit  
 316 cigarettes, receiving stolen cigarettes, or being involved in  
 317 the counterfeiting of cigarettes; or
- 318 4. ~~to any person who~~ Has been convicted within the past 5  
 319 years of any offense against the cigarette laws of this state or  
 320 who has been convicted in this state, any other state, or the  
 321 United States during the past 5 years of any offense designated  
 322 as a felony by such state or the United States, or to a  
 323 corporation, any of whose officers have been so convicted. The  
 324 term "convicted" ~~"conviction"~~ shall include an adjudication of  
 325 guilt on a plea of guilty or a plea of nolo contendere, or the  
 326 forfeiture of a bond when charged with a crime.

327 (e)~~(d)~~ The division may refuse to issue a ~~distributing~~  
 328 ~~agent, wholesale, or exporter~~ permit to any person, firm, or  
 329 corporation whose permit under the cigarette law has been

HB 1459

2004  
CS

330 | revoked or to any corporation, an officer of which has had his  
 331 | or her permit under the cigarette law revoked, or to any person  
 332 | who is or has been an officer of a corporation whose permit has  
 333 | been revoked under the cigarette law. Any permit issued to a  
 334 | firm or corporation prohibited from obtaining such permit under  
 335 | the cigarette law may be revoked by the division.

336 |       (f)~~(e)~~ Prior to an application for a distributing agent,  
 337 | wholesale dealer, or exporter permit being approved, the  
 338 | applicant shall file a set of fingerprints on forms provided by  
 339 | the division. The applicant shall also file a set of  
 340 | fingerprints for any person or persons interested directly or  
 341 | indirectly with the applicant in the business for which the  
 342 | permit is being sought, when so required by the division. If the  
 343 | applicant or any person interested with the applicant, either  
 344 | directly or indirectly, in the business for which the permit is  
 345 | sought shall be such a person as is within the definition of  
 346 | persons to whom a ~~distributing agent, wholesale dealer, or~~  
 347 | ~~exporter~~ permit shall be denied, then the application may be  
 348 | denied by the division. If the applicant is a partnership, all  
 349 | members of the partnership are required to file said  
 350 | fingerprints, or if a corporation, all principal officers of the  
 351 | corporation are required to file said fingerprints. The  
 352 | cigarette permit for a wholesale dealer or exporter shall be  
 353 | originally issued at a fee of \$100, which sum is to cover the  
 354 | cost of the investigation required before issuing such permit.

355 |       (g)~~(f)~~ The cigarette permits issued under this section  
 356 | ~~permit for a wholesale dealer or exporter~~ shall be renewed from  
 357 | year to year ~~as a matter of course~~, at an annual cost of \$100,

HB 1459

2004  
CS

358 on or before July 1, upon making application to the division and  
359 upon payment of the annual renewal fee.

360 (h)~~(g)~~ Permittees, by acceptance of their permits, agree  
361 that their places of business or vehicles transporting  
362 cigarettes shall always be subject to be inspected and searched  
363 without a search warrant for the purpose of ascertaining that  
364 all provisions of this part are complied with by authorized  
365 employees of the division and also by sheriffs, deputy sheriffs,  
366 and police officers during business hours or during any other  
367 time such premises are occupied by the permittee or other  
368 persons. Retail cigarette dealers and manufacturers'  
369 representatives, by dealing in cigarettes, agree that their  
370 places of business or vehicles transporting cigarettes shall  
371 always be subject to inspection and search without a search  
372 warrant for the purpose of ascertaining that all provisions of  
373 this part are complied with by authorized employees of the  
374 division and also by sheriffs, deputy sheriffs, and police  
375 officers during business hours or other times when the premises  
376 are occupied by the retail dealer or manufacturers'  
377 representatives or other persons.

378 (i)~~(h)~~ No retail sales of cigarettes may be made at a  
379 location for which a wholesale dealer, distributing agent, or  
380 exporter permit has been issued. The excise tax on sales made to  
381 any traveling location, such as an itinerant store or industrial  
382 caterer, shall be paid into the General Revenue Fund  
383 unallocated. Cigarettes may be purchased for retail purposes  
384 only from a person holding a wholesale dealer permit. The  
385 invoice for the purchase of cigarettes must show the place of

HB 1459

2004  
CS

386 | business for which the purchase is made and the cigarettes  
 387 | cannot be transferred to any other place of business for the  
 388 | purpose of resale.

389 |         Section 8. Subsections (2), (3), and (6) of section  
 390 | 210.18, Florida Statutes, are amended, and subsection (9) is  
 391 | added to said section, to read:

392 |         210.18 Penalties for tax evasion; reports by sheriffs.--

393 |         (2) Except as otherwise provided in this section, any  
 394 | person ~~wholesale or retail dealer~~ who fails, neglects, or  
 395 | refuses to comply with, or violates the provisions of, this part  
 396 | or the rules adopted ~~and regulations promulgated~~ by the division  
 397 | under this part commits ~~is guilty of~~ a misdemeanor of the first  
 398 | degree, punishable as provided in s. 775.082 or s. 775.083. Any  
 399 | person ~~wholesale or retail dealer~~ who has been convicted of a  
 400 | violation of any provision of the cigarette tax law and who is  
 401 | thereafter convicted of a further violation of the cigarette tax  
 402 | law is, upon conviction of such further offense, guilty of a  
 403 | felony of the third degree, punishable as provided in s.  
 404 | 775.082, s. 775.083, or s. 775.084.

405 |         (3) Any person who falsely or fraudulently makes, forges,  
 406 | alters, or counterfeits any stamp or impression die used in  
 407 | meter machines prescribed by the division under the provisions  
 408 | of this part; or, with intent to evade taxes, jams, tampers  
 409 | with, or alters such a machine; or causes or procures to be  
 410 | falsely or fraudulently made, forged, altered, or counterfeited  
 411 | any such stamp or die; or knowingly and willfully utters,  
 412 | purchases, passes or tenders as true any such false, altered, or  
 413 | counterfeited stamp or die impression; or, with the intent to

HB 1459

2004  
CS

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

417 ~~(6)(a) Every person, firm, or corporation, other than a~~  
 418 ~~licensee under the provisions of this part, who possesses,~~  
 419 ~~removes, deposits, or conceals, or aids in the possessing,~~  
 420 ~~removing, depositing, or concealing of, any unstamped cigarettes~~  
 421 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~  
 422 ~~second degree, punishable as provided in s. 775.082 or s.~~  
 423 ~~775.083. In lieu of the penalties provided in those sections,~~  
 424 ~~however, the person, firm, or corporation may pay the tax plus a~~  
 425 ~~penalty equal to the amount of the tax authorized under s.~~  
 426 ~~210.02 on the unstamped cigarettes.~~

427 (a)~~(b)~~ Every person, firm, or corporation, other than a  
 428 licensee under the provisions of this part, who possesses,  
 429 removes, deposits, or conceals, or aids in the possessing,  
 430 removing, depositing, or concealing of, any unstamped cigarettes  
 431 in excess of 50 cartons is presumed to have knowledge that they  
 432 have not been taxed and commits ~~is guilty of~~ a felony of the  
 433 third degree, punishable as provided in s. 775.082, s. 775.083,  
 434 or s. 775.084.

435 (b)~~(e)~~ This section does not apply to a person possessing  
 436 not in excess of three cartons of such cigarettes purchased by  
 437 such possessor outside the state in accordance with the laws of  
 438 the place where purchased and brought into this state by such  
 439 possessor. The burden of proof that such cigarettes were  
 440 purchased outside the state and in accordance with the laws of

441 the place where purchased shall in all cases be upon the  
442 possessor of such cigarettes.

443 (9) Notwithstanding any other provision of law, the sale  
444 or possession for sale of counterfeit cigarettes by any person  
445 or by a manufacturer, importer, distributing agent, wholesale  
446 dealer, or retail dealer shall result in the seizure of the  
447 product and related machinery by the division or any law  
448 enforcement agency and shall be punishable as follows:

449 (a)1. A first violation with a total quantity of less than  
450 two cartons of cigarettes or the equivalent amount of other  
451 cigarettes shall be punishable by a fine not to exceed \$1,000 or  
452 five times the retail value of the cigarettes involved,  
453 whichever is greater, or imprisonment not to exceed 5 years, or  
454 both.

455 2. A subsequent violation with a total quantity of less  
456 than two cartons of cigarettes or the equivalent amount of other  
457 cigarettes shall be punishable by a fine not to exceed \$5,000 or  
458 five times the retail value of the cigarettes involved,  
459 whichever is greater, or imprisonment not to exceed 5 years, or  
460 both, and shall also result in the revocation by the division of  
461 the permit of the manufacturer, importer, distributing agent,  
462 wholesale dealer, or retail dealer.

463 (b)1. A first violation with a total quantity of two or  
464 more cartons of cigarettes or the equivalent amount of other  
465 cigarettes shall be punishable by a fine not to exceed \$2,000 or  
466 five times the retail value of the cigarettes involved,  
467 whichever is greater, or imprisonment not to exceed 5 years, or  
468 both.

HB 1459

2004  
CS

469        2. A subsequent violation with a quantity of two cartons  
 470 of cigarettes or more or the equivalent amount of other  
 471 cigarettes shall be punishable by a fine not to exceed \$50,000  
 472 or five times the retail value of the cigarettes involved,  
 473 whichever is greater, or imprisonment not to exceed 5 years, or  
 474 both, and shall also result in the revocation by the division of  
 475 the permit of the manufacturer, importer, distributing agent,  
 476 wholesale dealer, or retail dealer.

477  
 478 For purposes of this subsection, any counterfeit cigarettes  
 479 seized by the division shall be destroyed.

480        Section 9. Section 210.181, Florida Statutes, is created  
 481 to read:

482        210.181 Civil penalties.--

483        (1) Whoever knowingly omits, neglects, or refuses to  
 484 comply with any duty imposed upon him or her by this part, or to  
 485 do or cause to be done any of the things required by this part,  
 486 or does anything prohibited by this part shall, in addition to  
 487 any other penalty provided in this part, be liable for a fine of  
 488 \$1,000 or five times the retail value of the cigarettes  
 489 involved, whichever is greater.

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

494        Section 10. This act shall take effect upon becoming a  
 495 law.