

1 A bill to be entitled
2 An act relating to nonsettling-manufacturer
3 cigarettes; creating s. 210.0205, F.S.;
4 providing definitions; imposing a fee on
5 certain cigarettes; providing payment
6 requirements; requiring reporting of the number
7 and denominations of stamps affixed to
8 individual packages of certain cigarettes by
9 manufacturer and brand family; authorizing
10 rulemaking regarding such reports; requiring
11 registration with the Division of Alcoholic
12 Beverages and Tobacco of the Department of
13 Business and Professional Regulation of
14 nonsettling manufacturers of cigarettes;
15 requiring development, maintenance, and
16 publication by the division of a list of
17 nonsettling manufacturers of cigarettes which
18 have certified their compliance with this act;
19 treating cigarettes of certain manufacturers
20 that have not paid the fee imposed by this act
21 or that have not complied with reporting
22 requirements as cigarettes for which the tax
23 imposed by s. 210.02, F.S., has not been paid;
24 prohibiting the stamping of certain cigarettes
25 for which the fee imposed by this act has not
26 been paid in full or the nonsettling
27 manufacturer of which has not complied with
28 reporting requirements; amending s. 210.01,
29 F.S.; revising and providing definitions;
30 amending s. 210.05, F.S.; providing stamp
31 requirements for cigarettes in transport;

1 providing stamp exceptions for certain
2 cigarettes; requiring transporters of certain
3 cigarettes to submit certain reports; amending
4 s. 210.06, F.S.; revising requirements for and
5 limitations on the affixation of stamps;
6 providing requirements with respect to receipt,
7 possession, storage, and transport of unstamped
8 cigarette packages; creating s. 210.085, F.S.;
9 requiring manufacturers, importers,
10 distributing agents, dealers, and retail
11 dealers to hold a current, valid permit to
12 sell, distribute, or receive cigarettes;
13 amending s. 210.09, F.S.; providing notice and
14 filing guidelines for certain person shipping
15 unstamped cigarette packages; authorizing
16 certain law enforcement officials to inspect
17 certain shipping vehicles; amending s. 210.12,
18 F.S.; authorizing the state to claim certain
19 property and materials from certain dealers and
20 retailers who attempt to defraud the state;
21 authorizing the destruction of certain
22 cigarettes; amending s. 210.15, F.S.; providing
23 criteria for permit application; prohibiting
24 issuance, maintenance, or renewal of certain
25 permits for certain applicants; providing
26 guidelines for permit application denial;
27 amending s. 210.18, F.S.; expanding the group
28 of violators subject to criminal liability;
29 prohibiting the sale or possession for sale of
30 counterfeit cigarettes; providing penalties;
31 creating s. 210.181, F.S.; providing civil

1 penalties for failure to comply with certain
2 duties or pay certain taxes; reenacting ss.
3 772.102(1)(a) and 895.02(1)(a), F.S., relating
4 to crimes constituting a "criminal activity"
5 and definitions as used in the Florida RICO
6 Act, to incorporate the amendment to s. 210.18,
7 F.S., in references thereto; providing an
8 appropriation and authorizing positions;
9 providing an appropriation to the Department of
10 Health; providing purposes; providing an
11 effective date.

12
13 WHEREAS, it is the intent of the Legislature to prevent
14 nonsettling manufacturers from undermining the state's policy
15 of reducing underage smoking by offering their cigarettes for
16 sale substantially below the price of cigarettes of other
17 manufacturers; to protect the tobacco settlement agreement and
18 funding, which is reduced as a result of the growth of
19 nonsettling-manufacturer cigarette sales, for programs funded
20 in whole or in part by payments to the state under the tobacco
21 settlement agreement and to recoup for the state
22 settlement-payment revenue lost to the state as a result of
23 nonsettling-manufacturer cigarette sales; to fund enforcement
24 and administration of nonsettling-manufacturer legislation and
25 the fee imposed in this act, including reasonable
26 administrative costs incurred by wholesale dealers complying
27 with any additional reporting requirements necessitated by
28 this act; and to fund such other purposes as the Legislature
29 determines, NOW, THEREFORE,

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

1 Section 1. Section 210.0205, Florida Statutes, is
2 created to read:

3 210.0205 Nonsettling-manufacturer fee.--

4 (1) As used in this section, the term:

5 (a) "Brand family" means all styles of cigarettes sold
6 under the same trademark and differentiated from one another
7 by means of additional modifiers or descriptors, including,
8 but not limited to, "menthol," "lights," "kings," and "100s."
9 The term includes any brand name, alone or in conjunction with
10 any other word; trademark; logo; symbol; motto; selling
11 message; recognizable pattern of colors; or other indicia of
12 product identification identical or similar to, or
13 identifiable with, a previously known brand of cigarettes.

14 (b) "Consumer Price Index" means the Consumer Price
15 Index for All Urban Consumers as published by the Bureau of
16 Labor Statistics of the United States Department of Labor.

17 (c) "Manufacturer" means a person or entity who
18 manufactures, fabricates, or assembles cigarettes. The term
19 includes an entity that is the first importer into the United
20 States of cigarettes manufactured abroad.

21 (d) "Nonsettling manufacturer" means any tobacco
22 product manufacturer that has not entered into the tobacco
23 settlement agreement defined in s. 215.56005(1)(f), or the
24 Attorney's General Settlement Agreement dated March 15, 1996 in
25 the State of Florida, et al. v. American Tobacco Company, et
26 al., Fifteenth Judicial Circuit, Case No. 95-1466.

27 (e) "Nonsettling-manufacturer cigarettes" means
28 cigarettes manufactured by a nonsettling manufacturer, except
29 when payments on such cigarettes are due to be made by a
30 settling manufacturer pursuant to a tobacco settlement
31 agreement described in paragraph (d).

1 (2) A fee, in addition to all other taxes or fees of
2 every kind imposed by law, is imposed upon the sale, receipt,
3 purchase, possession, consumption, handling, distribution, and
4 use in this state of nonsettling-manufactuer cigarettes to the
5 package of which an agent affixes a stamp or stamp insignia as
6 required by law or which are sold or purchased in the state
7 but are not required to bear a stamp or stamp insignia of this
8 state. The fee is in the amount of 10 mills per cigarette in
9 Fiscal Year 2004-2005, and 20 mills per cigarette in Fiscal
10 Year 2005-2006 and every year thereafter, to be adjusted
11 upward annually by the division each January 1 by the greater
12 of 3 percent or the Consumer Price Index, applied each year
13 for the previous year, beginning with Fiscal Year 2005-2006.

14 (3) The division shall collect the fee once each month
15 from each nonsettling manufacturer based on information
16 received pursuant to subsection (6). The division shall mail
17 to each nonsettling manufacturer not later than the 15th day
18 of each month a notice of the fee due from that manufacturer
19 for sales of its cigarettes made in the preceding month. Each
20 such nonsettling manufacturer shall ensure that the division
21 has received payment of the fee in full no later than the last
22 day of the month in which the notice was mailed. Except as
23 otherwise provided in this section, the fee shall be imposed,
24 collected, paid, administered, and enforced in the same manner
25 as the tax on cigarettes imposed by s. 210.02.

26 (4) A nonsettling manufacturer selling cigarettes in
27 this state on the effective date of this act shall provide to
28 the division the information described in subsections (7) and
29 (8) and pay the fee imposed by subsection (2) within 30 days
30 after the effective date of this act. If a nonsettling
31 manufacturer is not selling cigarettes in this state on the

1 effective date of this act, before commencing sales of
2 cigarettes in this state, the nonsettling manufacturer shall
3 prepay the fee imposed by subsection (2). The prepayment
4 amount shall be a sum determined by multiplying by 10 mills in
5 Fiscal Year 2004-2005 and by 20 mills in Fiscal Year 2005-2006
6 the number of cigarettes the division reasonably projects that
7 the nonsettling manufacturer will sell in this state in the
8 first calendar month or \$50,000, whichever is more. The
9 division may require a nonsettling manufacturer to provide any
10 information reasonably necessary to determine the amount of
11 the prepayment fee and, in the case of prepayment, shall
12 establish procedures for providing reimbursement to
13 nonsettling manufacturers if actual sales are less than sales
14 projected by the division and for additional payment by
15 nonsettling manufacturers if actual sales are greater than
16 sales projected by the division. As used in this subsection,
17 the term "cigarettes" refers only to nonsettling-manufacturer
18 cigarettes.

19 (5) The purposes of the fee are to:

20 (a) Prevent nonsettling manufacturers from undermining
21 the state's policy of reducing underage smoking by offering
22 cigarettes for sale substantially below the price of
23 cigarettes of other manufacturers.

24 (b)1. Protect the tobacco settlement agreement, as
25 defined in s. 215.56005(1)(f), and funding, which is reduced
26 as a result of the growth of nonsettling-manufacturer
27 cigarette sales, for programs funded in whole or in part by
28 payments to the state under the tobacco settlement agreement;
29 and

30
31

1 2. Recoup for the state settlement-payment revenue
2 lost to the state as a result of nonsettling-manufacturer
3 cigarette sales.

4 (c) Fund enforcement and administration of
5 nonsettling-manufacturer legislation and the fee imposed by
6 this section, including reasonable administrative costs
7 incurred by wholesale dealers complying with any additional
8 reporting requirements necessitated by this section.

9 (d) Fund such other purposes as the Legislature
10 determines; however, \$16 million of the proceeds received
11 under this act shall be provided annually through quarterly
12 disbursements to the Department of Health, for the purposes of
13 implementing a statewide anti-smoking marketing, educational
14 and advertising campaign to reduce youth tobacco use. The
15 Department of Health shall conduct surveillance and
16 evaluations to measure program performance and improve
17 implementation strategies. The Department of Health may
18 contract for any of the activities specified in this section.

19 (6) Monthly reports shall be made to the division
20 pursuant to s. 210.09(2) by each agent and wholesaler. Such
21 reports shall state the number and denominations of stamps or
22 stamp insignia affixed to individual packages of
23 nonsettling-manufacturer cigarettes and the number of
24 individual packages of nonsettling-manufacturer cigarettes
25 otherwise sold or purchased in this state or otherwise handled
26 or distributed in this state for sale in another state,
27 commonwealth, or territory of the United States, by
28 manufacturer and brand family, sold for each place of business
29 in the month preceding the month in which the report is made.
30 The division may adopt rules requiring any agent, wholesaler,
31 wholesale dealer, or nonsettling manufacturer to provide in

1 the monthly report any information necessary or appropriate to
2 determining the fee due under subsection (2) or to enforcing
3 this act.

4 (7) Before commencing sales of cigarettes in this
5 state or, if selling cigarettes in this state on the effective
6 date of this act, within 30 days after the effective date of
7 this act, a nonsettling manufacturer shall provide to the
8 division, on a form prescribed by the division:

9 (a) The complete name, address, and telephone number
10 of the nonsettling manufacturer.

11 (b) The date the nonsettling manufacturer began or
12 intends to begin selling cigarettes in this state.

13 (c) The names of the brand families of the cigarettes
14 the nonsettling manufacturer is selling or will sell in this
15 state.

16 (d) A statement of the nonsettling manufacturer's
17 intention to comply with the obligations imposed by this
18 section.

19 (e) The name, address, telephone number, and signature
20 of an officer of the nonsettling manufacturer attesting to all
21 of the information described in this subsection.

22 (8) Each nonsettling manufacturer subject to the fee
23 imposed by subsection (2) shall certify to the division on the
24 first day of each month that the manufacturer is in compliance
25 with this section and has paid in full the fee imposed by
26 subsection (2). The division shall develop, maintain, and
27 publish on its Internet website a directory listing all
28 nonsettling manufacturers that have provided current,
29 accurate, and complete certifications. The division shall
30 provide a copy of the list to any person upon request.

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1 (9) Cigarettes of a nonsettling manufacturer that has
 2 not paid a fee imposed by subsection (2), or that has not
 3 complied with the reporting requirements of subsections (4),
 4 (6), (7), and (8), shall be treated as cigarettes for which
 5 the tax imposed by s. 210.02 has not been paid. A person shall
 6 not affix to any package of nonsettling-manufacturer
 7 cigarettes the stamp required under s. 210.06, or otherwise
 8 purchase or sell such cigarettes, after such person receives
 9 notice from the division that the nonsettling manufacturer of
 10 such cigarettes has not paid in full the fee imposed by
 11 subsection (2) or if the nonsettling manufacturer is not
 12 listed on the division's directory described in subsection
 13 (8).

14 Section 2. Subsections (6) and (7) of section 210.01,
 15 Florida Statutes, are amended, and subsections (19) through
 16 (23) are added to that section, to read:

17 210.01 Definitions.--When used in this part the
 18 following words shall have the meaning herein indicated:

19 (6) "Wholesale dealer" means any person located inside
 20 or outside this state who sells cigarettes to retail dealers
 21 or other persons for purposes of resale only, or any person
 22 who operates more than one cigarette vending machine located
 23 in more than one place of business. Such term shall not
 24 include any cigarette manufacturer, export warehouse
 25 proprietor, or importer with a valid permit under 26 U.S.C. s.
 26 5712 if such person sells or distributes cigarettes in this
 27 state only to dealers who are agents and who hold valid and
 28 current permits under s. 210.15 or to any cigarette
 29 manufacturer, export warehouse proprietor, or importer who
 30 holds a valid and current permit under 26 U.S.C. s. 5712.

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

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

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

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

15 (22) "Counterfeit cigarettes" means cigarettes that
16 have false manufacturing labels, tobacco product packs with
17 counterfeit tax stamps, or any combination thereof.

18 (23) "Brand family" means all styles of cigarettes
19 sold under the same trademark and differentiated from one
20 another by means of additional modifiers or descriptors,
21 including, but not limited to, "menthol," "lights," "kings,"
22 and "100s," and includes any brand name used alone or in
23 conjunction with any other word, trademark, logo, symbol,
24 motto, selling message, recognizable pattern of colors, or any
25 other indicia of product identification identical or similar
26 to, or identifiable with, a previously known brand of
27 cigarettes.

28 Section 3. Subsection (6) is added to section 210.05,
29 Florida Statutes, to read:

30 210.05 Preparation and sale of stamps; discount.--
31

1 (6)(a) A person may not transport or cause to be
2 transported from this state cigarettes for sale in another
3 state without first affixing to the cigarettes the stamp
4 required by the state in which the cigarettes are to be sold
5 or paying any other excise tax on the cigarettes imposed by
6 the state in which the cigarettes are to be sold.

7 (b) A person may not affix to cigarettes the stamp
8 required by another state or pay any other excise tax on the
9 cigarettes imposed by another state if the other state
10 prohibits stamps from being affixed to the cigarettes,
11 prohibits the payment of any other excise tax on the
12 cigarettes, or prohibits the sale of the cigarettes.

13 (c) The requirements of paragraphs (a) and (b) do not
14 apply to cigarettes with respect to which the manufacturer or
15 importer either is a participating manufacturer (as defined in
16 section II(jj) of the master settlement agreement) or is in
17 full compliance with the qualifying statute (as defined in
18 section IX(d)(2)(E) of the master settlement agreement) of the
19 state in which the cigarettes are to be sold. An exemption
20 pursuant to this paragraph may only be asserted with respect
21 to cigarettes that, in the case of a participating
22 manufacturer, are deemed to be its cigarettes for purposes of
23 calculating its payments under the master settlement agreement
24 for the relevant year in the volumes and shares determined
25 pursuant to the master settlement agreement, and, in the case
26 of all other manufacturers and importers, are deemed to be its
27 cigarettes for purposes of the applicable qualifying statute.
28 For purposes of this subsection the term "master settlement
29 agreement" means the settlement agreement (and related
30 documents) entered into in 1998 by 46 states and leading
31 United States tobacco manufacturers. A person asserting an

1 exemption pursuant to this paragraph shall submit the reports
2 required by paragraph (d) and shall certify as provided in
3 that paragraph.

4 (d) On or before the 10th day of each month, a person
5 who transports or causes to be transported from this state
6 cigarettes for sale in another state shall submit to the
7 division a report identifying the quantity and brand family of
8 each brand of the cigarettes transported or caused to be
9 transported in the preceding calendar month and the name and
10 address of each recipient of the cigarettes. Such person shall
11 also certify under oath and subject to the penalties of
12 perjury that:

13 1. The stamps required by paragraph (a) have been
14 affixed in accordance with that paragraph or that such stamps
15 were not affixed pursuant to paragraph (b); or

16 2. Such person satisfies the requirements of paragraph
17 (c).

18 (e) For purposes of this section, the term "person"
19 means an individual, partnership, committee, association,
20 corporation, or any other organization or group of persons.
21 Person does not include any common or contract carrier, or
22 public warehouse that is not owned, in whole or in part,
23 directly or indirectly, by the person transporting the
24 cigarettes or causing the transport to be made.

25 (f) This subsection shall not be deemed to authorize
26 the possession or transportation of cigarettes by any person
27 not so authorized by another provision of this part.

28 Section 4. Subsection (1) of section 210.06, Florida
29 Statutes, is amended, and subsection (5) is added to that
30 section, to read:

31 210.06 Affixation of stamps; presumption.--

1 (1) Every dealer within ~~or without~~ the state shall
2 affix or cause to be affixed to such package or container of
3 such cigarettes ~~such~~, stamps as are required under this
4 section within 10 days after receipt of such products. Dealers
5 outside this state shall affix such stamps before the shipment
6 of cigarettes into this state, evidencing the payment of the
7 tax imposed by virtue of this part before such cigarettes are
8 offered for sale or use or consumed or before they are
9 otherwise disposed of in the state.

10 (a) A tax stamp shall be applied to all cigarette
11 packages intended for sale or distribution to consumers
12 subject to the tax imposed under s. 210.02, except as
13 otherwise provided in this act.

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

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

21 (5) Except as provided in s. 210.09(1), no person,
22 other than a dealer that receives unstamped cigarette packages
23 directly from a cigarette manufacturer or importer in
24 accordance with this section and s. 210.085, shall hold or
25 possess an unstamped cigarette package. Dealers shall be
26 permitted to set aside, without application of stamps, only
27 such part of the dealer's stock that is identified for sale or
28 distribution outside this state. If a dealer maintains stocks
29 of unstamped cigarette packages, such unstamped packages shall
30 be stored separately from stamped product packages. No
31 unstamped cigarette packages shall be transferred by a dealer

1 to another facility of the dealer within this state or to
2 another person within this state.

3 Section 5. Section 210.085, Florida Statutes, is
4 created to read:

5 210.085 Transactions only with permitted
6 manufacturers, importers, distributing agents, dealers, and
7 retail dealers.--A manufacturer, importer, or distributing
8 agent may sell or distribute cigarettes to a person located or
9 doing business within this state only if such person is a
10 dealer with a valid, current permit under s. 210.15. A dealer
11 may sell or distribute cigarettes to a person located or doing
12 business within this state only if such person is a dealer or
13 retail dealer with a valid, current permit under s. 569.003. A
14 dealer may obtain cigarettes only from a manufacturer or
15 importer who possesses a valid, current permit under 26 U.S.C.
16 s. 5712 or from a distributing agent or dealer with a valid,
17 current permit under s. 210.15. A retail dealer may obtain
18 cigarettes only from a manufacturer, importer, or dealer with
19 a valid, current permit under s. 210.15.

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

22 210.09 Records to be kept; reports to be made;
23 examination.--

24 (1)(a) Every person who shall possess or transport any
25 unstamped cigarettes upon the public highways, roads, or
26 streets of the state, shall be required to have in his or her
27 actual possession invoices or delivery tickets for such
28 cigarettes. The absence of such invoices or delivery tickets
29 shall be prima facie evidence that such person is a dealer in
30 cigarettes in this state and subject to the provisions of this
31 part.

1 (b) Any person who ships unstamped cigarette packages
 2 into this state other than to a manufacturer, importer, or
 3 dealer holding a valid, current permit pursuant to s. 210.15
 4 shall first file with the division a notice of such shipment.
 5 This paragraph shall not apply to any common or contract
 6 carrier that is transporting cigarettes through this state to
 7 another location outside this state under a proper bill of
 8 lading or freight bill that states the quantity, source, and
 9 destination of such cigarettes.

10 (c) In any case in which the division or its duly
 11 authorized agent, or any law enforcement officer of this
 12 state, has knowledge or reasonable grounds to believe that any
 13 vehicle is transporting cigarettes in violation of this part,
 14 the division, such agent, or such law enforcement officer is
 15 authorized to stop such vehicle and inspect the vehicle for
 16 contraband cigarettes.

17 Section 7. Subsection (1) of section 210.12, Florida
 18 Statutes, is amended, subsections (2) through (6) of that
 19 section are renumbered as subsections (4) through (8),
 20 respectively, and new subsections (2) and (3) are added to
 21 that section, to read:

22 210.12 Seizures; forfeiture proceedings.--

23 (1) The state, acting by and through the division,
 24 shall be authorized and empowered to seize, confiscate, and
 25 ~~forfeit for the use and benefit of the state,~~ any cigarettes
 26 upon which taxes payable hereunder may be unpaid or that are
 27 otherwise held in violation of the requirements of this
 28 chapter, and also any vending machine or receptacle in which
 29 ~~such~~ cigarettes upon which taxes have not been paid are held
 30 for sale, or any vending machine that does not have affixed
 31 thereto the identification sticker required by the provisions

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

8 (2) All fixtures, equipment, and other materials and
 9 personal property on the premises of any dealer or retail
 10 dealer who, with intent to defraud the state, fails to keep or
 11 make any record, return, report, or inventory required by this
 12 part; keeps or makes any false or fraudulent record, return,
 13 report, or inventory required by this part; refuses to pay any
 14 tax imposed by this part; or attempts in any manner to evade
 15 or defeat the requirements of this part shall be forfeited to
 16 the state.

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

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

21 210.15 Permits.--

22 (1)(a) Every person, firm, or corporation desiring to
 23 engage in business as a manufacturer, importer, exporter,
 24 distributing agent, or wholesale dealer of cigarettes deal in
 25 cigarettes as a distributing agent, wholesale dealer, or
 26 exporter within this state shall file with the division an
 27 application for a cigarette permit for each place of business
 28 located within this state or, in the absence of such place of
 29 business in this state, for wherever its principal place of
 30 business is located with the Division of Alcoholic Beverages
 31 and Tobacco. Every application for a cigarette permit shall be

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

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

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

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

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

11 1. Owes \$500 or more in delinquent cigarette taxes;

12 2. Had a cigarette importer, retail dealer, or dealer
 13 permit revoked by the division within the previous 2 years;

14 3. Has been convicted of selling stolen or counterfeit
 15 cigarettes, receiving stolen cigarettes, or being involved in
 16 the counterfeiting of cigarettes; or

17 4. Has to any person who has been convicted within the
 18 past 5 years of any offense against the cigarette laws of this
 19 state or ~~who~~ has been convicted in this state, any other
 20 state, or the United States during the past 5 years of any
 21 offense designated as a felony by such state or the United
 22 States, or to a corporation, any of whose officers have been
 23 so convicted. The term "convicted" "~~conviction~~" shall include
 24 an adjudication of guilt on a plea of guilty or a plea of nolo
 25 contendere, or the forfeiture of a bond when charged with a
 26 crime.

27 (e)(d) The division may refuse to issue a ~~distributing~~
 28 ~~agent, wholesale, or exporter~~ permit to any person, firm, or
 29 corporation whose permit under the cigarette law has been
 30 revoked or to any corporation, an officer of which has had his
 31 or her permit under the cigarette law revoked, or to any

1 person who is or has been an officer of a corporation whose
2 permit has been revoked under the cigarette law. Any permit
3 issued to a firm or corporation prohibited from obtaining such
4 permit under the cigarette law may be revoked by the division.

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

25 ~~(g)(f)~~ The cigarette permits issued under this section
26 ~~permit for a wholesale dealer or exporter~~ shall be renewed
27 from year to year ~~as a matter of course,~~ at an annual cost of
28 \$100, on or before July 1, upon making application to the
29 division and upon payment of the annual renewal fee.

30 ~~(h)(g)~~ Permittees, by acceptance of their permits,
31 agree that their places of business or vehicles transporting

1 cigarettes shall always be subject to be inspected and
2 searched without a search warrant for the purpose of
3 ascertaining that all provisions of this part are complied
4 with by authorized employees of the division and also by
5 sheriffs, deputy sheriffs, and police officers during business
6 hours or during any other time such premises are occupied by
7 the permittee or other persons. Retail cigarette dealers and
8 manufacturers' representatives, by dealing in cigarettes,
9 agree that their places of business or vehicles transporting
10 cigarettes shall always be subject to inspection and search
11 without a search warrant for the purpose of ascertaining that
12 all provisions of this part are complied with by authorized
13 employees of the division and also by sheriffs, deputy
14 sheriffs, and police officers during business hours or other
15 times when the premises are occupied by the retail dealer or
16 manufacturers' representatives or other persons.

17 ~~(i)(h)~~ No retail sales of cigarettes may be made at a
18 location for which a wholesale dealer, distributing agent, or
19 exporter permit has been issued. The excise tax on sales made
20 to any traveling location, such as an itinerant store or
21 industrial caterer, shall be paid into the General Revenue
22 Fund unallocated. Cigarettes may be purchased for retail
23 purposes only from a person holding a wholesale dealer permit.
24 The invoice for the purchase of cigarettes must show the place
25 of business for which the purchase is made and the cigarettes
26 cannot be transferred to any other place of business for the
27 purpose of resale.

28 Section 9. Subsections (2), (3), and (6) of section
29 210.18, Florida Statutes, are amended, and subsection (9) is
30 added to that section, to read:

31

1 210.18 Penalties for tax evasion; reports by
2 sheriffs.--

3 (2) Except as otherwise provided in this section, any
4 person ~~wholesale or retail dealer~~ who fails, neglects, or
5 refuses to comply with, or violates the provisions of, this
6 part or the rules adopted ~~and regulations promulgated~~ by the
7 division under this part commits ~~is guilty of~~ a misdemeanor of
8 the first degree, punishable as provided in s. 775.082 or s.
9 775.083. Any person ~~wholesale or retail dealer~~ who has been
10 convicted of a violation of any provision of the cigarette tax
11 law and who is thereafter convicted of a further violation of
12 the cigarette tax law is, upon conviction of such further
13 offense, guilty of a felony of the third degree, punishable as
14 provided in s. 775.082, s. 775.083, or s. 775.084.

15 (3) Any person who falsely or fraudulently makes,
16 forges, alters, or counterfeits any stamp or impression die
17 used in meter machines prescribed by the division under the
18 provisions of this part; or, with intent to evade taxes, jams,
19 tampers with, or alters such a machine; or causes or procures
20 to be falsely or fraudulently made, forged, altered, or
21 counterfeited any such stamp or die; or knowingly and
22 willfully utters, purchases, passes or tenders as true any
23 such false, altered, or counterfeited stamp or die impression;
24 or with the intent to defraud the state, fails to comply with
25 any other requirement of this chapter ~~commits is guilty of~~ a
26 felony of the third degree, punishable as provided in s.
27 775.082, s. 775.083, or s. 775.084.

28 (6)(a) ~~Every person, firm, or corporation, other than~~
29 ~~a licensee under the provisions of this part, who possesses,~~
30 ~~removes, deposits, or conceals, or aids in the possessing,~~
31 ~~removing, depositing, or concealing of, any unstamped~~

1 ~~cigarettes not in excess of 50 cartons is guilty of a~~
 2 ~~misdemeanor of the second degree, punishable as provided in s.~~
 3 ~~775.082 or s. 775.083. In lieu of the penalties provided in~~
 4 ~~those sections, however, the person, firm, or corporation may~~
 5 ~~pay the tax plus a penalty equal to the amount of the tax~~
 6 ~~authorized under s. 210.02 on the unstamped cigarettes.~~

7 ~~(a)(b)~~ Every person, firm, or corporation, other than
 8 a licensee under the provisions of this part, who possesses,
 9 removes, deposits, or conceals, or aids in the possessing,
 10 removing, depositing, or concealing of, any unstamped
 11 cigarettes in excess of 50 cartons is presumed to have
 12 knowledge that they have not been taxed and commits is guilty
 13 ~~of~~ a felony of the third degree, punishable as provided in s.
 14 775.082, s. 775.083, or s. 775.084.

15 ~~(b)(c)~~ This section does not apply to a person
 16 possessing not in excess of three cartons of such cigarettes
 17 purchased by such possessor outside the state in accordance
 18 with the laws of the place where purchased and brought into
 19 this state by such possessor. The burden of proof that such
 20 cigarettes were purchased outside the state and in accordance
 21 with the laws of the place where purchased shall in all cases
 22 be upon the possessor of such cigarettes.

23 (9) Notwithstanding any other provision of law, the
 24 sale or possession for sale of counterfeit cigarettes by any
 25 person or by a manufacturer, importer, distributing agent,
 26 wholesale dealer, or retail dealer shall result in the seizure
 27 of the product and related machinery by the division or any
 28 law enforcement agency and shall be punishable as follows:

29 (a)1. A first violation with a total quantity of less
 30 than two cartons of cigarettes or the equivalent amount of
 31 other cigarettes shall be punishable by a fine not to exceed

1 \$1,000 or five times the retail value of the cigarettes
2 involved, whichever is greater, or imprisonment not to exceed
3 5 years, or both.

4 2. A subsequent violation with a total quantity of
5 less than two cartons of cigarettes or the equivalent amount
6 of other cigarettes shall be punishable by a fine not to
7 exceed \$5,000 or five times the retail value of the cigarettes
8 involved, whichever is greater, or imprisonment not to exceed
9 5 years, or both, and shall also result in the revocation by
10 the division of the permit of the manufacturer, importer,
11 distributing agent, wholesale dealer, or retail dealer.

12 (b)1. A first violation with a total quantity of two
13 or more cartons of cigarettes or the equivalent amount of
14 other cigarettes shall be punishable by a fine not to exceed
15 \$2,000 or five times the retail value of the cigarettes
16 involved, whichever is greater, or imprisonment not to exceed
17 5 years, or both.

18 2. A subsequent violation with a quantity of two
19 cartons of cigarettes or more or the equivalent amount of
20 other cigarettes shall be punishable by a fine not to exceed
21 \$50,000 or five times the retail value of the cigarettes
22 involved, whichever is greater, or imprisonment not to exceed
23 5 years, or both, and shall also result in the revocation by
24 the division of the permit of the manufacturer, importer,
25 distributing agent, wholesale dealer, or retail dealer.

26

27 For purposes of this subsection, any counterfeit cigarettes
28 seized by the division shall be destroyed.

29 Section 10. Section 210.181, Florida Statutes, is
30 created to read:
31 210.181 Civil penalties.--

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

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

12 Section 11. For the purpose of incorporating the
 13 amendment made by this act to section 210.18, Florida
 14 Statutes, in a reference thereto, paragraph (a) of subsection
 15 (1) of section 772.102, Florida Statutes, is reenacted to
 16 read:

17 772.102 Definitions.--As used in this chapter, the
 18 term:

19 (1) "Criminal activity" means to commit, to attempt to
 20 commit, to conspire to commit, or to solicit, coerce, or
 21 intimidate another person to commit:

22 (a) Any crime which is chargeable by indictment or
 23 information under the following provisions:

24 1. Section 210.18, relating to evasion of payment of
 25 cigarette taxes.

26 2. Section 414.39, relating to public assistance
 27 fraud.

28 3. Section 440.105 or s. 440.106, relating to workers'
 29 compensation.

30 4. Part IV of chapter 501, relating to telemarketing.

31 5. Chapter 517, relating to securities transactions.

- 1 6. Section 550.235, s. 550.3551, or s. 550.3605,
2 relating to dogracing and horseracing.
- 3 7. Chapter 550, relating to jai alai frontons.
- 4 8. Chapter 552, relating to the manufacture,
5 distribution, and use of explosives.
- 6 9. Chapter 562, relating to beverage law enforcement.
- 7 10. Section 624.401, relating to transacting insurance
8 without a certificate of authority, s. 624.437(4)(c)1.,
9 relating to operating an unauthorized multiple-employer
10 welfare arrangement, or s. 626.902(1)(b), relating to
11 representing or aiding an unauthorized insurer.
- 12 11. Chapter 687, relating to interest and usurious
13 practices.
- 14 12. Section 721.08, s. 721.09, or s. 721.13, relating
15 to real estate timeshare plans.
- 16 13. Chapter 782, relating to homicide.
- 17 14. Chapter 784, relating to assault and battery.
- 18 15. Chapter 787, relating to kidnapping.
- 19 16. Chapter 790, relating to weapons and firearms.
- 20 17. Section 796.03, s. 796.04, s. 796.05, or s.
21 796.07, relating to prostitution.
- 22 18. Chapter 806, relating to arson.
- 23 19. Section 810.02(2)(c), relating to specified
24 burglary of a dwelling or structure.
- 25 20. Chapter 812, relating to theft, robbery, and
26 related crimes.
- 27 21. Chapter 815, relating to computer-related crimes.
- 28 22. Chapter 817, relating to fraudulent practices,
29 false pretenses, fraud generally, and credit card crimes.
- 30 23. Section 827.071, relating to commercial sexual
31 exploitation of children.

1 24. Chapter 831, relating to forgery and
2 counterfeiting.

3 25. Chapter 832, relating to issuance of worthless
4 checks and drafts.

5 26. Section 836.05, relating to extortion.

6 27. Chapter 837, relating to perjury.

7 28. Chapter 838, relating to bribery and misuse of
8 public office.

9 29. Chapter 843, relating to obstruction of justice.

10 30. Section 847.011, s. 847.012, s. 847.013, s.
11 847.06, or s. 847.07, relating to obscene literature and
12 profanity.

13 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
14 or s. 849.25, relating to gambling.

15 32. Chapter 893, relating to drug abuse prevention and
16 control.

17 33. Section 914.22 or s. 914.23, relating to
18 witnesses, victims, or informants.

19 34. Section 918.12 or s. 918.13, relating to tampering
20 with jurors and evidence.

21 Section 12. For the purpose of incorporating the
22 amendment made by this act to section 210.18, Florida
23 Statutes, in a reference thereto, paragraph (a) of subsection
24 (1) of section 895.02, Florida Statutes, is reenacted to read:

25 895.02 Definitions.--As used in ss. 895.01-895.08, the
26 term:

27 (1) "Racketeering activity" means to commit, to
28 attempt to commit, to conspire to commit, or to solicit,
29 coerce, or intimidate another person to commit:

30

31

1 (a) Any crime which is chargeable by indictment or
2 information under the following provisions of the Florida
3 Statutes:

4 1. Section 210.18, relating to evasion of payment of
5 cigarette taxes.

6 2. Section 403.727(3)(b), relating to environmental
7 control.

8 3. Section 414.39, relating to public assistance
9 fraud.

10 4. Section 409.920, relating to Medicaid provider
11 fraud.

12 5. Section 440.105 or s. 440.106, relating to workers'
13 compensation.

14 6. Sections 499.0051, 499.0052, 499.0053, 499.0054,
15 and 499.0691, relating to crimes involving contraband and
16 adulterated drugs.

17 7. Part IV of chapter 501, relating to telemarketing.

18 8. Chapter 517, relating to sale of securities and
19 investor protection.

20 9. Section 550.235, s. 550.3551, or s. 550.3605,
21 relating to dogracing and horseracing.

22 10. Chapter 550, relating to jai alai frontons.

23 11. Chapter 552, relating to the manufacture,
24 distribution, and use of explosives.

25 12. Chapter 560, relating to money transmitters, if
26 the violation is punishable as a felony.

27 13. Chapter 562, relating to beverage law enforcement.

28 14. Section 624.401, relating to transacting insurance
29 without a certificate of authority, s. 624.437(4)(c)1.,
30 relating to operating an unauthorized multiple-employer
31

- 1 welfare arrangement, or s. 626.902(1)(b), relating to
2 representing or aiding an unauthorized insurer.
- 3 15. Section 655.50, relating to reports of currency
4 transactions, when such violation is punishable as a felony.
- 5 16. Chapter 687, relating to interest and usurious
6 practices.
- 7 17. Section 721.08, s. 721.09, or s. 721.13, relating
8 to real estate timeshare plans.
- 9 18. Chapter 782, relating to homicide.
- 10 19. Chapter 784, relating to assault and battery.
- 11 20. Chapter 787, relating to kidnapping.
- 12 21. Chapter 790, relating to weapons and firearms.
- 13 22. Section 796.03, s. 796.04, s. 796.05, or s.
14 796.07, relating to prostitution.
- 15 23. Chapter 806, relating to arson.
- 16 24. Section 810.02(2)(c), relating to specified
17 burglary of a dwelling or structure.
- 18 25. Chapter 812, relating to theft, robbery, and
19 related crimes.
- 20 26. Chapter 815, relating to computer-related crimes.
- 21 27. Chapter 817, relating to fraudulent practices,
22 false pretenses, fraud generally, and credit card crimes.
- 23 28. Chapter 825, relating to abuse, neglect, or
24 exploitation of an elderly person or disabled adult.
- 25 29. Section 827.071, relating to commercial sexual
26 exploitation of children.
- 27 30. Chapter 831, relating to forgery and
28 counterfeiting.
- 29 31. Chapter 832, relating to issuance of worthless
30 checks and drafts.
- 31 32. Section 836.05, relating to extortion.

- 1 33. Chapter 837, relating to perjury.
- 2 34. Chapter 838, relating to bribery and misuse of
3 public office.
- 4 35. Chapter 843, relating to obstruction of justice.
- 5 36. Section 847.011, s. 847.012, s. 847.013, s.
6 847.06, or s. 847.07, relating to obscene literature and
7 profanity.
- 8 37. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
9 or s. 849.25, relating to gambling.
- 10 38. Chapter 874, relating to criminal street gangs.
- 11 39. Chapter 893, relating to drug abuse prevention and
12 control.
- 13 40. Chapter 896, relating to offenses related to
14 financial transactions.
- 15 41. Sections 914.22 and 914.23, relating to tampering
16 with a witness, victim, or informant, and retaliation against
17 a witness, victim, or informant.
- 18 42. Sections 918.12 and 918.13, relating to tampering
19 with jurors and evidence.
- 20 Section 13. For the 2004-2005 fiscal year, the sum of
21 \$480,028 is appropriated from the Alcoholic Beverage and
22 Tobacco Trust Fund and four full-time equivalent positions are
23 authorized to be established by the Department of Business and
24 Professional Regulation for the purpose of conducting
25 regulatory activities related to the transportation and sale
26 of cigarettes.
- 27 Section 14. From the funds generated by this act, the
28 sum of \$2 million is appropriated to the Department of Health
29 to address health care disparities in the minority community.
- 30 Section 15. This act shall take effect on July 1,
31 2004.