

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; amending s. 17.41,
11 F.S.; providing additional source of revenue to
12 the Tobacco Settlement Trust Fund; providing an
13 effective date.

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

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

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

5 210.0205 Nonsettling-manufacturer fee.--

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

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

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

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

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

29 (e) "Nonsettling-manufacturer cigarettes" means
30 cigarettes manufactured by a nonsettling manufacturer, except
31 when payments on such cigarettes are due to be made by a

1 settling manufacturer pursuant to a tobacco settlement
2 agreement described in paragraph (d).

3 (2) A fee, in addition to all other taxes or fees of
4 every kind imposed by law, is imposed upon the sale, receipt,
5 purchase, possession, consumption, handling, distribution, and
6 use in this state of nonsettling-manufactuer cigarettes to the
7 package of which an agent affixes a stamp or stamp insignia as
8 required by law or which are sold or purchased in the state
9 but are not required to bear a stamp or stamp insignia of this
10 state. The fee is in the amount of 10 mills per cigarette in
11 Fiscal Year 2004-2005, and 20 mills per cigarette in Fiscal
12 Year 2005-2006. Beginning January 1, 2007, and on January 1 of
13 each year thereafter, the division shall adjust the tax rate
14 by the greater of 3 percent or the percentage change in the
15 average of the Consumer Price Index issued by the United
16 States Department of Labor for the most recent 12-month period
17 ending September 30 compared to the 12-month period ending
18 September 30 of the prior year.

19 (3) The division shall collect the fee once each month
20 from each nonsettling manufacturer based on information
21 received pursuant to subsection (6). The division shall mail
22 to each nonsettling manufacturer not later than the 15th day
23 of each month a notice of the fee due from that manufacturer
24 for sales of its cigarettes made in the preceding month. Each
25 such nonsettling manufacturer shall ensure that the division
26 has received payment of the fee in full no later than the last
27 day of the month in which the notice was mailed. Except as
28 otherwise provided in this section, proceeds from the fee
29 shall be deposited into the Tobacco Settlement Clearing Trust
30 Fund and the fee shall be imposed, collected, paid,

31

1 administered, and enforced in the same manner as the tax on
2 cigarettes imposed by s. 210.02.

3 (4) A nonsettling manufacturer selling cigarettes in
4 this state on the effective date of this act shall provide to
5 the division the information described in subsections (7) and
6 (8) and pay the fee imposed by subsection (2) within 30 days
7 after the effective date of this act. If a nonsettling
8 manufacturer is not selling cigarettes in this state on the
9 effective date of this act, before commencing sales of
10 cigarettes in this state, the nonsettling manufacturer shall
11 prepay the fee imposed by subsection (2). The prepayment
12 amount shall be a sum determined by multiplying by 10 mills in
13 Fiscal Year 2004-2005 and by 20 mills in Fiscal Year 2005-2006
14 the number of cigarettes the division reasonably projects that
15 the nonsettling manufacturer will sell in this state in the
16 first calendar month or \$50,000, whichever is more. The
17 division may require a nonsettling manufacturer to provide any
18 information reasonably necessary to determine the amount of
19 the prepayment fee and, in the case of prepayment, shall
20 establish procedures for providing reimbursement to
21 nonsettling manufacturers if actual sales are less than sales
22 projected by the division and for additional payment by
23 nonsettling manufacturers if actual sales are greater than
24 sales projected by the division. As used in this subsection,
25 the term "cigarettes" refers only to nonsettling-manufacturer
26 cigarettes.

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

28 (a) Prevent nonsettling manufacturers from undermining
29 the state's policy of reducing underage smoking by offering
30 cigarettes for sale substantially below the price of
31 cigarettes of other manufacturers.

1 (b)1. Protect the tobacco settlement agreement, as
2 defined in s. 215.56005(1)(f), and funding, which is reduced
3 as a result of the growth of nonsettling-manufacturer
4 cigarette sales, for programs funded in whole or in part by
5 payments to the state under the tobacco settlement agreement;
6 and

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

10 (c) Fund enforcement and administration of
11 nonsettling-manufacturer legislation and the fee imposed by
12 this section, including reasonable administrative costs
13 incurred by wholesale dealers complying with any additional
14 reporting requirements necessitated by this section.

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

25 (6) Monthly reports shall be made to the division
26 pursuant to s. 210.09(2) by each agent and wholesaler. Such
27 reports shall state the number and denominations of stamps or
28 stamp insignia affixed to individual packages of
29 nonsettling-manufacturer cigarettes and the number of
30 individual packages of nonsettling-manufacturer cigarettes
31 otherwise sold or purchased in this state or otherwise handled

1 or distributed in this state for sale in another state,
2 commonwealth, or territory of the United States, by
3 manufacturer and brand family, sold for each place of business
4 in the month preceding the month in which the report is made.
5 The division may adopt rules requiring any agent, wholesaler,
6 wholesale dealer, or nonsettling manufacturer to provide in
7 the monthly report any information necessary or appropriate to
8 determining the fee due under subsection (2) or to enforcing
9 this act.

10 (7) Before commencing sales of cigarettes in this
11 state or, if selling cigarettes in this state on the effective
12 date of this act, within 30 days after the effective date of
13 this act, a nonsettling manufacturer shall provide to the
14 division, on a form prescribed by the division:

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

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

19 (c) The names of the brand families of the cigarettes
20 the nonsettling manufacturer is selling or will sell in this
21 state.

22 (d) A statement of the nonsettling manufacturer's
23 intention to comply with the obligations imposed by this
24 section.

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

28 (8) Each nonsettling manufacturer subject to the fee
29 imposed by subsection (2) shall certify to the division on the
30 first day of each month that the manufacturer is in compliance
31 with this section and has paid in full the fee imposed by

1 subsection (2). The division shall develop, maintain, and
2 publish on its Internet website a directory listing all
3 nonsettling manufacturers that have provided current,
4 accurate, and complete certifications. The division shall
5 provide a copy of the list to any person upon request.

6 (9) Cigarettes of a nonsettling manufacturer that has
7 not paid a fee imposed by subsection (2), or that has not
8 complied with the reporting requirements of subsections (4),
9 (6), (7), and (8), shall be treated as cigarettes for which
10 the tax imposed by s. 210.02 has not been paid. A person shall
11 not affix to any package of nonsettling-manufacturer
12 cigarettes the stamp required under s. 210.06, or otherwise
13 purchase or sell such cigarettes, after such person receives
14 notice from the division that the nonsettling manufacturer of
15 such cigarettes has not paid in full the fee imposed by
16 subsection (2) or if the nonsettling manufacturer is not
17 listed on the division's directory described in subsection
18 (8).

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

22 210.01 Definitions.--When used in this part the
23 following words shall have the meaning herein indicated:

24 (6) "Wholesale dealer" means any person located inside
25 or outside this state who sells cigarettes to retail dealers
26 or other persons for purposes of resale only, or any person
27 who operates more than one cigarette vending machine located
28 in more than one place of business. Such term shall not
29 include any cigarette manufacturer, export warehouse
30 proprietor, or importer with a valid permit under 26 U.S.C. s.
31 5712 if such person sells or distributes cigarettes in this

1 state only to dealers who are agents and who hold valid and
2 current permits under s. 210.15 or to any cigarette
3 manufacturer, export warehouse proprietor, or importer who
4 holds a valid and current permit under 26 U.S.C. s. 5712.

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

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

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

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

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

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

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

3 210.05 Preparation and sale of stamps; discount.--

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

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

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

1 agreement" means the settlement agreement (and related
2 documents) entered into in 1998 by 46 states and leading
3 United States tobacco manufacturers. A person asserting an
4 exemption pursuant to this paragraph shall submit the reports
5 required by paragraph (d) and shall certify as provided in
6 that paragraph.

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

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

19 2. Such person satisfies the requirements of paragraph
20 (c).

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

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

31

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

4 210.06 Affixation of stamps; presumption.--

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

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

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

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

25 (5) Except as provided in s. 210.09(1), no person,
26 other than a dealer that receives unstamped cigarette packages
27 directly from a cigarette manufacturer or importer in
28 accordance with this section and s. 210.085, shall hold or
29 possess an unstamped cigarette package. Dealers shall be
30 permitted to set aside, without application of stamps, only
31 such part of the dealer's stock that is identified for sale or

1 distribution outside this state. If a dealer maintains stocks
2 of unstamped cigarette packages, such unstamped packages shall
3 be stored separately from stamped product packages. No
4 unstamped cigarette packages shall be transferred by a dealer
5 to another facility of the dealer within this state or to
6 another person within this state.

7 Section 5. Section 210.085, Florida Statutes, is
8 created to read:

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

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

26 210.09 Records to be kept; reports to be made;
27 examination.--

28 (1)(a) Every person who shall possess or transport any
29 unstamped cigarettes upon the public highways, roads, or
30 streets of the state, shall be required to have in his or her
31 actual possession invoices or delivery tickets for such

1 cigarettes. The absence of such invoices or delivery tickets
2 shall be prima facie evidence that such person is a dealer in
3 cigarettes in this state and subject to the provisions of this
4 part.

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

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

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

26 210.12 Seizures; forfeiture proceedings.--

27 (1) The state, acting by and through the division,
28 shall be authorized and empowered to seize, confiscate, and
29 ~~forfeit for the use and benefit of the state,~~ any cigarettes
30 upon which taxes payable hereunder may be unpaid or that are
31 otherwise held in violation of the requirements of this

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

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

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

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

25 210.15 Permits.--

26 (1)(a) Every person, firm, or corporation desiring to
 27 engage in business as a manufacturer, importer, exporter,
 28 distributing agent, or wholesale dealer of cigarettes deal in
 29 ~~cigarettes as a distributing agent, wholesale dealer, or~~
 30 ~~exporter~~ within this state shall file with the division an
 31 application for a cigarette permit for each place of business

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

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

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

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

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

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

18 3. Has been convicted of selling stolen or counterfeit
 19 cigarettes, receiving stolen cigarettes, or being involved in
 20 the counterfeiting of cigarettes; or

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

31

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

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

30 ~~(g)(f)~~ The cigarette permits issued under this section
31 ~~permit for a wholesale dealer or exporter~~ shall be renewed

1 from year to year ~~as a matter of course~~, at an annual cost of
2 \$100, on or before July 1, upon making application to the
3 division and upon payment of the annual renewal fee.

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

22 (i)~~(h)~~ No retail sales of cigarettes may be made at a
23 location for which a wholesale dealer, distributing agent, or
24 exporter permit has been issued. The excise tax on sales made
25 to any traveling location, such as an itinerant store or
26 industrial caterer, shall be paid into the General Revenue
27 Fund unallocated. Cigarettes may be purchased for retail
28 purposes only from a person holding a wholesale dealer permit.
29 The invoice for the purchase of cigarettes must show the place
30 of business for which the purchase is made and the cigarettes
31

1 cannot be transferred to any other place of business for the
2 purpose of resale.

3 Section 9. Subsections (2), (3), and (6) of section
4 210.18, Florida Statutes, are amended, and subsection (9) is
5 added to that section, to read:

6 210.18 Penalties for tax evasion; reports by
7 sheriffs.--

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

20 (3) Any person who falsely or fraudulently makes,
21 forges, alters, or counterfeits any stamp or impression die
22 used in meter machines prescribed by the division under the
23 provisions of this part; or, with intent to evade taxes, jams,
24 tampers with, or alters such a machine; or causes or procures
25 to be falsely or fraudulently made, forged, altered, or
26 counterfeited any such stamp or die; or knowingly and
27 willfully utters, purchases, passes or tenders as true any
28 such false, altered, or counterfeited stamp or die impression;
29 or with the intent to defraud the state, fails to comply with
30 any other requirement of this chapter commits is guilty of a
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1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3 ~~(6)(a) Every person, firm, or corporation, other than~~
4 ~~a licensee under the provisions of this part, who possesses,~~
5 ~~removes, deposits, or conceals, or aids in the possessing,~~
6 ~~removing, depositing, or concealing of, any unstamped~~
7 ~~cigarettes not in excess of 50 cartons is guilty of a~~
8 ~~misdemeanor of the second degree, punishable as provided in s.~~
9 ~~775.082 or s. 775.083. In lieu of the penalties provided in~~
10 ~~those sections, however, the person, firm, or corporation may~~
11 ~~pay the tax plus a penalty equal to the amount of the tax~~
12 ~~authorized under s. 210.02 on the unstamped cigarettes.~~

13 ~~(a)(b)~~ Every person, firm, or corporation, other than
14 a licensee under the provisions of this part, who possesses,
15 removes, deposits, or conceals, or aids in the possessing,
16 removing, depositing, or concealing of, any unstamped
17 cigarettes in excess of 50 cartons is presumed to have
18 knowledge that they have not been taxed and commits ~~is guilty~~
19 ~~of~~ a felony of the third degree, punishable as provided in s.
20 775.082, s. 775.083, or s. 775.084.

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

29 (9) Notwithstanding any other provision of law, the
30 sale or possession for sale of counterfeit cigarettes by any
31 person or by a manufacturer, importer, distributing agent,

1 wholesale dealer, or retail dealer shall result in the seizure
2 of the product and related machinery by the division or any
3 law enforcement agency and shall be punishable as follows:

4 (a)1. A first violation with a total quantity of less
5 than two cartons of cigarettes or the equivalent amount of
6 other cigarettes shall be punishable by a fine not to exceed
7 \$1,000 or five times the retail value of the cigarettes
8 involved, whichever is greater, or imprisonment not to exceed
9 5 years, or both.

10 2. A subsequent violation with a total quantity of
11 less than two cartons of cigarettes or the equivalent amount
12 of other cigarettes shall be punishable by a fine not to
13 exceed \$5,000 or five times the retail value of the cigarettes
14 involved, whichever is greater, or imprisonment not to exceed
15 5 years, or both, and shall also result in the revocation by
16 the division of the permit of the manufacturer, importer,
17 distributing agent, wholesale dealer, or retail dealer.

18 (b)1. A first violation with a total quantity of two
19 or more cartons of cigarettes or the equivalent amount of
20 other cigarettes shall be punishable by a fine not to exceed
21 \$2,000 or five times the retail value of the cigarettes
22 involved, whichever is greater, or imprisonment not to exceed
23 5 years, or both.

24 2. A subsequent violation with a quantity of two
25 cartons of cigarettes or more or the equivalent amount of
26 other cigarettes shall be punishable by a fine not to exceed
27 \$50,000 or five times the retail value of the cigarettes
28 involved, whichever is greater, or imprisonment not to exceed
29 5 years, or both, and shall also result in the revocation by
30 the division of the permit of the manufacturer, importer,
31 distributing agent, wholesale dealer, or retail dealer.

1
2 For purposes of this subsection, any counterfeit cigarettes
3 seized by the division shall be destroyed.

4 Section 10. Section 210.181, Florida Statutes, is
5 created to read:

6 210.181 Civil penalties.--

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

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

18 Section 11. For the purpose of incorporating the
19 amendment made by this act to section 210.18, Florida
20 Statutes, in a reference thereto, paragraph (a) of subsection
21 (1) of section 772.102, Florida Statutes, is reenacted to
22 read:

23 772.102 Definitions.--As used in this chapter, the
24 term:

25 (1) "Criminal activity" means to commit, to attempt to
26 commit, to conspire to commit, or to solicit, coerce, or
27 intimidate another person to commit:

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

30 1. Section 210.18, relating to evasion of payment of
31 cigarette taxes.

- 1 2. Section 414.39, relating to public assistance
2 fraud.
- 3 3. Section 440.105 or s. 440.106, relating to workers'
4 compensation.
- 5 4. Part IV of chapter 501, relating to telemarketing.
- 6 5. Chapter 517, relating to securities transactions.
- 7 6. Section 550.235, s. 550.3551, or s. 550.3605,
8 relating to dogracing and horseracing.
- 9 7. Chapter 550, relating to jai alai frontons.
- 10 8. Chapter 552, relating to the manufacture,
11 distribution, and use of explosives.
- 12 9. Chapter 562, relating to beverage law enforcement.
- 13 10. Section 624.401, relating to transacting insurance
14 without a certificate of authority, s. 624.437(4)(c)1.,
15 relating to operating an unauthorized multiple-employer
16 welfare arrangement, or s. 626.902(1)(b), relating to
17 representing or aiding an unauthorized insurer.
- 18 11. Chapter 687, relating to interest and usurious
19 practices.
- 20 12. Section 721.08, s. 721.09, or s. 721.13, relating
21 to real estate timeshare plans.
- 22 13. Chapter 782, relating to homicide.
- 23 14. Chapter 784, relating to assault and battery.
- 24 15. Chapter 787, relating to kidnapping.
- 25 16. Chapter 790, relating to weapons and firearms.
- 26 17. Section 796.03, s. 796.04, s. 796.05, or s.
27 796.07, relating to prostitution.
- 28 18. Chapter 806, relating to arson.
- 29 19. Section 810.02(2)(c), relating to specified
30 burglary of a dwelling or structure.
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- 1 20. Chapter 812, relating to theft, robbery, and
2 related crimes.
- 3 21. Chapter 815, relating to computer-related crimes.
- 4 22. Chapter 817, relating to fraudulent practices,
5 false pretenses, fraud generally, and credit card crimes.
- 6 23. Section 827.071, relating to commercial sexual
7 exploitation of children.
- 8 24. Chapter 831, relating to forgery and
9 counterfeiting.
- 10 25. Chapter 832, relating to issuance of worthless
11 checks and drafts.
- 12 26. Section 836.05, relating to extortion.
- 13 27. Chapter 837, relating to perjury.
- 14 28. Chapter 838, relating to bribery and misuse of
15 public office.
- 16 29. Chapter 843, relating to obstruction of justice.
- 17 30. Section 847.011, s. 847.012, s. 847.013, s.
18 847.06, or s. 847.07, relating to obscene literature and
19 profanity.
- 20 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
21 or s. 849.25, relating to gambling.
- 22 32. Chapter 893, relating to drug abuse prevention and
23 control.
- 24 33. Section 914.22 or s. 914.23, relating to
25 witnesses, victims, or informants.
- 26 34. Section 918.12 or s. 918.13, relating to tampering
27 with jurors and evidence.
- 28 Section 12. For the purpose of incorporating the
29 amendment made by this act to section 210.18, Florida
30 Statutes, in a reference thereto, paragraph (a) of subsection
31 (1) of section 895.02, Florida Statutes, is reenacted to read:

1 895.02 Definitions.--As used in ss. 895.01-895.08, the
2 term:

3 (1) "Racketeering activity" means to commit, to
4 attempt to commit, to conspire to commit, or to solicit,
5 coerce, or intimidate another person to commit:

6 (a) Any crime which is chargeable by indictment or
7 information under the following provisions of the Florida
8 Statutes:

9 1. Section 210.18, relating to evasion of payment of
10 cigarette taxes.

11 2. Section 403.727(3)(b), relating to environmental
12 control.

13 3. Section 414.39, relating to public assistance
14 fraud.

15 4. Section 409.920, relating to Medicaid provider
16 fraud.

17 5. Section 440.105 or s. 440.106, relating to workers'
18 compensation.

19 6. Sections 499.0051, 499.0052, 499.0053, 499.0054,
20 and 499.0691, relating to crimes involving contraband and
21 adulterated drugs.

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

23 8. Chapter 517, relating to sale of securities and
24 investor protection.

25 9. Section 550.235, s. 550.3551, or s. 550.3605,
26 relating to dogracing and horseracing.

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

28 11. Chapter 552, relating to the manufacture,
29 distribution, and use of explosives.

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

- 1 13. Chapter 562, relating to beverage law enforcement.
- 2 14. Section 624.401, relating to transacting insurance
- 3 without a certificate of authority, s. 624.437(4)(c)1.,
- 4 relating to operating an unauthorized multiple-employer
- 5 welfare arrangement, or s. 626.902(1)(b), relating to
- 6 representing or aiding an unauthorized insurer.
- 7 15. Section 655.50, relating to reports of currency
- 8 transactions, when such violation is punishable as a felony.
- 9 16. Chapter 687, relating to interest and usurious
- 10 practices.
- 11 17. Section 721.08, s. 721.09, or s. 721.13, relating
- 12 to real estate timeshare plans.
- 13 18. Chapter 782, relating to homicide.
- 14 19. Chapter 784, relating to assault and battery.
- 15 20. Chapter 787, relating to kidnapping.
- 16 21. Chapter 790, relating to weapons and firearms.
- 17 22. Section 796.03, s. 796.04, s. 796.05, or s.
- 18 796.07, relating to prostitution.
- 19 23. Chapter 806, relating to arson.
- 20 24. Section 810.02(2)(c), relating to specified
- 21 burglary of a dwelling or structure.
- 22 25. Chapter 812, relating to theft, robbery, and
- 23 related crimes.
- 24 26. Chapter 815, relating to computer-related crimes.
- 25 27. Chapter 817, relating to fraudulent practices,
- 26 false pretenses, fraud generally, and credit card crimes.
- 27 28. Chapter 825, relating to abuse, neglect, or
- 28 exploitation of an elderly person or disabled adult.
- 29 29. Section 827.071, relating to commercial sexual
- 30 exploitation of children.
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1 30. Chapter 831, relating to forgery and
2 counterfeiting.

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

5 32. Section 836.05, relating to extortion.

6 33. Chapter 837, relating to perjury.

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

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

10 36. 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 37. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
14 or s. 849.25, relating to gambling.

15 38. Chapter 874, relating to criminal street gangs.

16 39. Chapter 893, relating to drug abuse prevention and
17 control.

18 40. Chapter 896, relating to offenses related to
19 financial transactions.

20 41. Sections 914.22 and 914.23, relating to tampering
21 with a witness, victim, or informant, and retaliation against
22 a witness, victim, or informant.

23 42. Sections 918.12 and 918.13, relating to tampering
24 with jurors and evidence.

25 Section 13. For the 2004-2005 fiscal year, the sum of
26 \$480,028 is appropriated from the Alcoholic Beverage and
27 Tobacco Trust Fund and four full-time equivalent positions are
28 authorized to be established by the Department of Business and
29 Professional Regulation for the purpose of conducting
30 regulatory activities related to the transportation and sale
31 of cigarettes.

1 Section 14. From the funds generated by this act, the
2 sum of \$2 million is appropriated to the Department of Health
3 to address health care disparities in the minority community.

4 Section 15. Subsection (2) of section 17.41, Florida
5 Statutes, is amended to read:

6 17.41 Department of Financial Services Tobacco
7 Settlement Clearing Trust Fund.--

8 (2) Funds to be credited to the Tobacco Settlement
9 Clearing Trust Fund shall consist of payments received by the
10 state from settlement of State of Florida v. American Tobacco
11 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996) and fees from the
12 nonsettling-manufacturer fee collected pursuant to s.

13 210.0205. Moneys received from the settlement and fees and
14 deposited into the trust fund are exempt from the service
15 charges imposed under s. 215.20.

16 Section 16. This act shall take effect on July 1,
17 2004.

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