

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

.
.
.

1 Representative Bucher offered the following:

2
3 **Amendment (with title amendment)**

4 On page 23, remove lines 1 and 2, and insert:

5 Section 13. Section 210.0205, Florida Statutes, is created
6 to read:

7 210.0205 Nonsettling-manufacturer fee.--

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

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

Amendment No. (for drafter's use only)

16 identification identical or similar to, or identifiable with, a
17 previously known brand of cigarettes.

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

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

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

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

36 (2) A fee, in addition to all other taxes or fees of every
37 kind imposed by law, is imposed upon the sale, receipt,
38 purchase, possession, consumption, handling, distribution, and
39 use in this state of nonsettling-manufacturer cigarettes to the
40 package of which an agent affixes a stamp or stamp insignia as
41 required by law or which are sold or purchased in the state but
42 are not required to bear a stamp or stamp insignia of this
43 state. The fee is in the amount of 10 mills per cigarette in

409965

Amendment No. (for drafter's use only)

44 Fiscal Year 2004-2005, and 20 mills per cigarette in Fiscal Year
45 2005-2006. Beginning January 1, 2007, and on January 1 of each
46 year thereafter, the division shall adjust the tax rate by the
47 greater of 3 percent or the percentage change in the average of
48 the Consumer Price Index issued by the United States Department
49 of Labor for the most recent 12-month period ending September 30
50 compared to the 12-month period ending September 30 of the prior
51 year.

52 (3) The division shall collect the fee once each month
53 from each nonsettling manufacturer based on information received
54 pursuant to subsection(6). The division shall mail to each
55 nonsettling manufacturer not later than the 15th day of each
56 month a notice of the fee due from that manufacturer for sales
57 of its cigarettes made in the preceding month. Each such
58 nonsettling manufacturer shall ensure that the division has
59 received payment of the fee in full no later than the last day
60 of the month in which the notice was mailed. Except as otherwise
61 provided in this section, proceeds from the fee shall be
62 deposited into the Tobacco Settlement Clearing Trust Fund and
63 the fee shall be imposed, collected, paid, administered, and
64 enforced in the same manner as the tax on cigarettes imposed by
65 s. 210.02.

66 (4) A nonsettling manufacturer selling cigarettes in this
67 state on the effective date of this act shall provide to the
68 division the information described in subsections (7) and (8)
69 and pay the fee imposed by subsection (2) within 30 days after
70 the effective date of this act. If a nonsettling manufacturer is
71 not selling cigarettes in this state on the effective date of

409965

Amendment No. (for drafter's use only)

72 this act, before commencing sales of cigarettes in this state,
73 the nonsettling manufacturer shall prepay the fee imposed by
74 subsection (2). The prepayment amount shall be a sum determined
75 by multiplying by 10 mills in Fiscal Year 2004-2005 and by 20
76 mills in Fiscal Year 2005-2006 the number of cigarettes the
77 division reasonably projects that the nonsettling manufacturer
78 will sell in this state in the first calendar month or \$50,000,
79 whichever is more. The division may require a nonsettling
80 manufacturer to provide any information reasonably necessary to
81 determine the amount of the prepayment fee and, in the case of
82 prepayment, shall establish procedures for providing
83 reimbursement to nonsettling manufacturers if actual sales are
84 less than sales projected by the division and for additional
85 payment by nonsettling manufacturers if actual sales are greater
86 than sales projected by the division. As used in this
87 subsection, the term "cigarettes" refers only to nonsettling-
88 manufacturer cigarettes.

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

90 (a) Prevent nonsettling manufacturers from undermining the
91 state's policy of reducing underage smoking by offering
92 cigarettes for sale substantially below the price of cigarettes
93 of other manufacturers.

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

409965

Amendment No. (for drafter's use only)

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

102 (c) Fund enforcement and administration of nonsettling-
103 manufacturer legislation and the fee imposed by this section,
104 including reasonable administrative costs incurred by wholesale
105 dealers complying with any additional reporting requirements
106 necessitated by this section.

107 (d) Fund such other purposes as the Legislature
108 determines; however, \$16 million of the proceeds received under
109 this act shall be provided annually through quarterly
110 disbursements to the Department of Health, for the purposes of
111 implementing a statewide anti-smoking marketing, educational and
112 advertising campaign to reduce youth tobacco use. The Department
113 of Health shall conduct surveillance and evaluations to measure
114 program performance and improve implementation strategies. The
115 Department of Health may contract for any of the activities
116 specified in this section.

117 (6) Monthly reports shall be made to the division pursuant
118 to s. 210.09(2) by each agent and wholesaler. Such reports shall
119 state the number and denominations of stamps or stamp insignia
120 affixed to individual packages of nonsettling-manufacturer
121 cigarettes and the number of individual packages of nonsettling-
122 manufacturer cigarettes otherwise sold or purchased in this
123 state or otherwise handled or distributed in this state for sale
124 in another state, commonwealth, or territory of the United
125 States, by manufacturer and brand family, sold for each place of
126 business in the month preceding the month in which the report is

409965

Amendment No. (for drafter's use only)

127 made. The division may adopt rules requiring any agent,
128 wholesaler, wholesale dealer, or nonsettling manufacturer to
129 provide in the monthly report any information necessary or
130 appropriate to determining the fee due under subsection (2) or to
131 enforcing this act.

132 (7) Before commencing sales of cigarettes in this state
133 or, if selling cigarettes in this state on the effective date of
134 this act, within 30 days after the effective date of this act, a
135 nonsettling manufacturer shall provide to the division, on a
136 form prescribed by the division:

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

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

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

143 (d) A statement of the nonsettling manufacturer's
144 intention to comply with the obligations imposed by this
145 section.

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

149 (8) Each nonsettling manufacturer subject to the fee
150 imposed by subsection (2) shall certify to the division on the
151 first day of each month that the manufacturer is in compliance
152 with this section and has paid in full the fee imposed by
153 subsection (2). The division shall develop, maintain, and
154 publish on its Internet website a directory listing all

409965

Amendment No. (for drafter's use only)

155 nonsettling manufacturers that have provided current, accurate,
156 and complete certifications. The division shall provide a copy
157 of the list to any person upon request.

158 (9) Cigarettes of a nonsettling manufacturer that has not
159 paid a fee imposed by subsection (2), or that has not complied
160 with the reporting requirements of subsections (4), (6), (7),
161 and (8), shall be treated as cigarettes for which the tax
162 imposed by s. 210.02 has not been paid. A person shall not affix
163 to any package of nonsettling-manufacturer cigarettes the stamp
164 required under s. 210.06, or otherwise purchase or sell such
165 cigarettes, after such person receives notice from the division
166 that the nonsettling manufacturer of such cigarettes has not
167 paid in full the fee imposed by subsection (2) or if the
168 nonsettling manufacturer is not listed on the division's
169 directory described in subsection (8).

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

173 210.01 Definitions.--When used in this part the following
174 words shall have the meaning herein indicated:

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

409965

Amendment No. (for drafter's use only)

183 agents and who hold valid and current permits under s. 210.15 or
184 to any cigarette manufacturer, export warehouse proprietor, or
185 importer who holds a valid and current permit under 26 U.S.C. s.
186 5712.

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

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

194 (20) "Importer" means any person with a valid permit under
195 26 U.S.C. s. 5712 who imports into the United States, directly
196 or indirectly, a finished cigarette for sale or distribution.

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

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

203 (23) "Brand family" means all styles of cigarettes sold
204 under the same trademark and differentiated from one another by
205 means of additional modifiers or descriptors, including, but not
206 limited to, "menthol," "lights," "kings," and "100s," and
207 includes any brand name used alone or in conjunction with any
208 other word, trademark, logo, symbol, motto, selling message,
209 recognizable pattern of colors, or any other indicia of product

409965

Amendment No. (for drafter's use only)

210 identification identical or similar to, or identifiable with, a
211 previously known brand of cigarettes.

212 Section 15. Subsection (6) is added to section 210.05,
213 Florida Statutes, to read:

214 210.05 Preparation and sale of stamps; discount.--

215 (6)(a) A person may not transport or cause to be
216 transported from this state cigarettes for sale in another state
217 without first affixing to the cigarettes the stamp required by
218 the state in which the cigarettes are to be sold or paying any
219 other excise tax on the cigarettes imposed by the state in which
220 the cigarettes are to be sold.

221 (b) A person may not affix to cigarettes the stamp
222 required by another state or pay any other excise tax on the
223 cigarettes imposed by another state if the other state prohibits
224 stamps from being affixed to the cigarettes, prohibits the
225 payment of any other excise tax on the cigarettes, or prohibits
226 the sale of the cigarettes.

227 (c) The requirements of paragraphs (a) and (b) do not
228 apply to cigarettes with respect to which the manufacturer or
229 importer either is a participating manufacturer (as defined in
230 section II(jj) of the master settlement agreement) or is in full
231 compliance with the qualifying statute (as defined in section
232 IX(d)(2)(E) of the master settlement agreement) of the state in
233 which the cigarettes are to be sold. An exemption pursuant to
234 this paragraph may only be asserted with respect to cigarettes
235 that, in the case of a participating manufacturer, are deemed to
236 be its cigarettes for purposes of calculating its payments under
237 the master settlement agreement for the relevant year in the

409965

Amendment No. (for drafter's use only)

238 volumes and shares determined pursuant to the master settlement
239 agreement, and, in the case of all other manufacturers and
240 importers, are deemed to be its cigarettes for purposes of the
241 applicable qualifying statute. For purposes of this subsection
242 the term "master settlement agreement" means the settlement
243 agreement (and related documents) entered into in 1998 by 46
244 states and leading United States tobacco manufacturers. A person
245 asserting an exemption pursuant to this paragraph shall submit
246 the reports required by paragraph (d) and shall certify as
247 provided in that paragraph.

248 (d) On or before the 10th day of each month, a person who
249 transports or causes to be transported from this state
250 cigarettes for sale in another state shall submit to the
251 division a report identifying the quantity and brand family of
252 each brand of the cigarettes transported or caused to be
253 transported in the preceding calendar month and the name and
254 address of each recipient of the cigarettes. Such person shall
255 also certify under oath and subject to the penalties of perjury
256 that:

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

260 2. Such person satisfies the requirements of paragraph
261 (c).

262 (e) For purposes of this section, the term "person" means
263 an individual, partnership, committee, association, corporation,
264 or any other organization or group of persons. Person does not
265 include any common or contract carrier, or public warehouse that

409965

Amendment No. (for drafter's use only)

266 is not owned, in whole or in part, directly or indirectly, by
267 the person transporting the cigarettes or causing the transport
268 to be made.

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

272 Section 16. Subsection (1) of section 210.06, Florida
273 Statutes, is amended, and subsection(5) is added to that
274 section, to read:

275 210.06 Affixation of stamps; presumption.--

276 (1) Every dealer within ~~or without~~ the state shall affix
277 or cause to be affixed to such package or container of such
278 cigarettes such, stamps as are required under this section
279 within 10 days after receipt of such products. Dealers outside
280 this state shall affix such stamps before the shipment of
281 cigarettes into this state, ~~evidencing the payment of the tax~~
282 ~~imposed by virtue of this part before such cigarettes are~~
283 ~~offered for sale or use or consumed or before they are otherwise~~
284 ~~disposed of in the state.~~

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

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

292 (c) Dealers may apply stamps only to cigarette packages
293 received directly from a manufacturer or importer of cigarettes

409965

Amendment No. (for drafter's use only)

294 who possesses a valid and current permit under 26 U.S.C. s.
295 5712.

296 (5) Except as provided in s. 210.09(1), no person, other
297 than a dealer that receives unstamped cigarette packages
298 directly from a cigarette manufacturer or importer in accordance
299 with this section and s. 210.085, shall hold or possess an
300 unstamped cigarette package. Dealers shall be permitted to set
301 aside, without application of stamps, only such part of the
302 dealer's stock that is identified for sale or distribution
303 outside this state. If a dealer maintains stocks of unstamped
304 cigarette packages, such unstamped packages shall be stored
305 separately from stamped product packages. No unstamped cigarette
306 packages shall be transferred by a dealer to another facility of
307 the dealer within this state or to another person within this
308 state.

309 Section 17. Section 210.085, Florida Statutes, is created
310 to read:

311 210.085 Transactions only with permitted manufacturers,
312 importers, distributing agents, dealers, and retail dealers. A
313 manufacturer, importer, or distributing agent may sell or
314 distribute cigarettes to a person located or doing business
315 within this state only if such person is a dealer with a valid,
316 current permit under s. 210.15. A dealer may sell or distribute
317 cigarettes to a person located or doing business within this
318 state only if such person is a dealer or retail dealer with a
319 valid, current permit under s. 569.003. A dealer may obtain
320 cigarettes only from a manufacturer or importer who possesses a
321 valid, current permit under 26 U.S.C. s. 5712 or from a

409965

Amendment No. (for drafter's use only)

322 distributing agent or dealer with a valid, current permit under
323 s. 210.15. A retail dealer may obtain cigarettes only from a
324 manufacturer, importer, or dealer with a valid, current permit
325 under s. 210.15.

326 Section 18. Subsection (1) of section 210.09, Florida
327 Statutes, is amended to read:

328 210.09 Records to be kept; reports to be made;
329 examination.--

330 (1)(a) Every person who shall possess or transport any
331 unstamped cigarettes upon the public highways, roads, or streets
332 of the state, shall be required to have in his or her actual
333 possession invoices or delivery tickets for such cigarettes. The
334 absence of such invoices or delivery tickets shall be prima
335 facie evidence that such person is a dealer in cigarettes in
336 this state and subject to the provisions of this part.

337 (b) Any person who ships unstamped cigarette packages into
338 this state other than to a manufacturer, importer, or dealer
339 holding a valid, current permit pursuant to s. 210.15 shall
340 first file with the division a notice of such shipment. This
341 paragraph shall not apply to any common or contract carrier that
342 is transporting cigarettes through this state to another
343 location outside this state under a proper bill of lading or
344 freight bill that states the quantity, source, and destination
345 of such cigarettes.

346 (c) In any case in which the division or its duly
347 authorized agent, or any law enforcement officer of this state,
348 has knowledge or reasonable grounds to believe that any vehicle
349 is transporting cigarettes in violation of this part, the

409965

Amendment No. (for drafter's use only)

350 division, such agent, or such law enforcement officer is
351 authorized to stop such vehicle and inspect the vehicle for
352 contraband cigarettes.

353 Section 19. Subsection (1) of section 210.12, Florida
354 Statutes, is amended, subsections(2) through (6) of that section
355 are renumbered as subsections (4) through (8), respectively, and
356 new subsections (2) and (3) are added to that section, to read:

357 210.12 Seizures; forfeiture proceedings.--

358 (1) The state, acting by and through the division, shall
359 be authorized and empowered to seize, confiscate, and forfeit
360 ~~for the use and benefit of the state,~~ any cigarettes upon which
361 taxes payable hereunder may be unpaid or that are otherwise held
362 in violation of the requirements of this chapter, and also any
363 vending machine or receptacle in which ~~such~~ cigarettes upon
364 which taxes have not been paid are held for sale, or any vending
365 machine that does not have affixed thereto the identification
366 sticker required by the provisions of s. 210.07, or which does
367 not display at all times at least one package of each brand of
368 cigarettes located therein so the same is clearly visible and
369 arranged in such a manner that the cigarette tax stamp or meter
370 impression of the stamp affixed thereto is clearly visible. Such
371 seizure may be made by the division, its duly authorized
372 representative, any sheriff or deputy sheriff, or any police
373 officer.

374 (2) All fixtures, equipment, and other materials and
375 personal property on the premises of any dealer or retail dealer
376 who, with intent to defraud the state, fails to keep or make any
377 record, return, report, or inventory required by this part;

Amendment No. (for drafter's use only)

378 keeps or makes any false or fraudulent record, return, report,
379 or inventory required by this part; refuses to pay any tax
380 imposed by this part; or attempts in any manner to evade or
381 defeat the requirements of this part shall be forfeited to the
382 state.

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

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

387 210.15 Permits.--

388 (1)(a) Every person, firm, or corporation desiring to
389 engage in business as a manufacturer, importer, exporter,
390 distributing agent, or wholesale dealer of cigarettes deal in
391 cigarettes as a distributing agent, wholesale dealer, or
392 exporter within this state shall file with the division an
393 application for a cigarette permit for each place of business
394 located within this state or, in the absence of such place of
395 business in this state, for wherever its principal place of
396 business is located with the Division of Alcoholic Beverages and
397 Tobacco. Every application for a cigarette permit shall be made
398 on forms furnished by the division and shall set forth the name
399 under which the applicant transacts or intends to transact
400 business, the location of the applicant's place of business
401 within the state, if any, and such other information as the
402 division may require. If the applicant has or intends to have
403 more than one place of business dealing in cigarettes within
404 this state, the application shall state the location of each
405 place of business. If the applicant is an association, the

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

406 application shall set forth the names and addresses of the
407 persons constituting the association, and if a corporation, the
408 names and addresses of the principal officers thereof and any
409 other information prescribed by the division for the purpose of
410 identification. The application shall be signed and verified by
411 oath or affirmation by the owner, if a natural person, and in
412 the case of an association or partnership, members or partners
413 thereof, and in the case of a corporation, by an executive
414 officer thereof or by any person specifically authorized by the
415 corporation to sign the application, to which shall be attached
416 the written evidence of this authority. The cigarette permit for
417 a distributing agent shall be issued annually for which an
418 annual fee of \$5 shall be charged.

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

424 (c) Permits ~~The permit for a distributing agent, wholesale~~
425 ~~dealer, or exporter~~ shall be issued only to persons of good
426 moral character, who are not less than 18 years of age.
427 ~~Distributing agent, wholesale dealer, or exporter~~ Permits to
428 corporations shall be issued only to corporations whose officers
429 are of good moral character and not less than 18 years of age.
430 There shall be no exemptions from the permit fees herein
431 provided to any persons, association of persons, or corporation,
432 any law to the contrary notwithstanding.

409965

Amendment No. (for drafter's use only)

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

- 438 1. Owes \$500 or more in delinquent cigarette taxes;
439 2. Had a cigarette importer, retail dealer, or dealer
440 permit revoked by the division within the previous 2 years;
441 3. Has been convicted of selling stolen or counterfeit
442 cigarettes, receiving stolen cigarettes, or being involved in
443 the counterfeiting of cigarettes; or
444 4. Has to any person who has been convicted within the
445 past 5 years of any offense against the cigarette laws of this
446 state or who has been convicted in this state, any other state,
447 or the United States during the past 5 years of any offense
448 designated as a felony by such state or the United States, or to
449 a corporation, any of whose officers have been so convicted. The
450 term "convicted" "conviction" shall include an adjudication of
451 guilt on a plea of guilty or a plea of nolo contendere, or the
452 forfeiture of a bond when charged with a crime.

453 (e)(d) The division may refuse to issue a ~~distributing~~
454 ~~agent, wholesale, or exporter~~ permit to any person, firm, or
455 corporation whose permit under the cigarette law has been
456 revoked or to any corporation, an officer of which has had his
457 or her permit under the cigarette law revoked, or to any person
458 who is or has been an officer of a corporation whose permit has
459 been revoked under the cigarette law. Any permit issued to a

Amendment No. (for drafter's use only)

460 firm or corporation prohibited from obtaining such permit under
461 the cigarette law may be revoked by the division.

462 (f)~~(e)~~ Prior to an application for a distributing agent,
463 wholesale dealer, or exporter permit being approved, the
464 applicant shall file a set of fingerprints on forms provided by
465 the division. The applicant shall also file a set of
466 fingerprints for any person or persons interested directly or
467 indirectly with the applicant in the business for which the
468 permit is being sought, when so required by the division. If the
469 applicant or any person interested with the applicant, either
470 directly or indirectly, in the business for which the permit is
471 sought shall be such a person as is within the definition of
472 persons to whom a ~~distributing agent, wholesale dealer, or~~
473 ~~exporter~~ permit shall be denied, then the application may be
474 denied by the division. If the applicant is a partnership, all
475 members of the partnership are required to file said
476 fingerprints, or if a corporation, all principal officers of the
477 corporation are required to file said fingerprints. The
478 cigarette permit for a wholesale dealer or exporter shall be
479 originally issued at a fee of \$100, which sum is to cover the
480 cost of the investigation required before issuing such permit.

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

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

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

488 cigarettes shall always be subject to be inspected and searched
489 without a search warrant for the purpose of ascertaining that
490 all provisions of this part are complied with by authorized
491 employees of the division and also by sheriffs, deputy sheriffs,
492 and police officers during business hours or during any other
493 time such premises are occupied by the permittee or other
494 persons. Retail cigarette dealers and manufacturers'
495 representatives, by dealing in cigarettes, agree that their
496 places of business or vehicles transporting cigarettes shall
497 always be subject to inspection and search without a search
498 warrant for the purpose of ascertaining that all provisions of
499 this part are complied with by authorized employees of the
500 division and also by sheriffs, deputy sheriffs, and police
501 officers during business hours or other times when the premises
502 are occupied by the retail dealer or manufacturers'
503 representatives or other persons.

504 (i)~~(h)~~ No retail sales of cigarettes may be made at a
505 location for which a wholesale dealer, distributing agent, or
506 exporter permit has been issued. The excise tax on sales made to
507 any traveling location, such as an itinerant store or industrial
508 caterer, shall be paid into the General Revenue Fund
509 unallocated. Cigarettes may be purchased for retail purposes
510 only from a person holding a wholesale dealer permit. The
511 invoice for the purchase of cigarettes must show the place of
512 business for which the purchase is made and the cigarettes
513 cannot be transferred to any other place of business for the
514 purpose of resale.

409965

Amendment No. (for drafter's use only)

515 Section 21. Subsections (2), (3), and (6) of section
516 210.18, Florida Statutes, are amended, and subsection (9) is
517 added to that section, to read:

518 210.18 Penalties for tax evasion; reports by sheriffs.--

519 (2) Except as otherwise provided in this section, any
520 person ~~wholesale or retail dealer~~ who fails, neglects, or
521 refuses to comply with, or violates the provisions of, this part
522 or the rules adopted ~~and regulations promulgated~~ by the division
523 under this part commits ~~is guilty of~~ a misdemeanor of the first
524 degree, punishable as provided in s. 775.082 or s. 775.083. Any
525 person ~~wholesale or retail dealer~~ who has been convicted of a
526 violation of any provision of the cigarette tax law and who is
527 thereafter convicted of a further violation of the cigarette tax
528 law is, upon conviction of such further offense, guilty of a
529 felony of the third degree, punishable as provided in s.
530 775.082, s. 775.083, or s. 775.084.

531 (3) Any person who falsely or fraudulently makes, forges,
532 alters, or counterfeits any stamp or impression die used in
533 meter machines prescribed by the division under the provisions
534 of this part; or, with intent to evade taxes, jams, tampers
535 with, or alters such a machine; or causes or procures to be
536 falsely or fraudulently made, forged, altered, or counterfeited
537 any such stamp or die; or knowingly and willfully utters,
538 purchases, passes or tenders as true any such false, altered, or
539 counterfeited stamp or die impression; or with the intent to
540 defraud the state, fails to comply with any other requirement of
541 this chapter commits ~~is guilty of~~ a felony of the third degree,
542 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

409965

Amendment No. (for drafter's use only)

543 ~~(6)(a) Every person, firm, or corporation, other than a~~
544 ~~licensee under the provisions of this part, who possesses,~~
545 ~~removes, deposits, or conceals, or aids in the possessing,~~
546 ~~removing, depositing, or concealing of, any unstamped cigarettes~~
547 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~
548 ~~second degree, punishable as provided in s. 775.082 or s.~~
549 ~~775.083. In lieu of the penalties provided in those sections,~~
550 ~~however, the person, firm, or corporation may pay the tax plus a~~
551 ~~penalty equal to the amount of the tax authorized under s.~~
552 ~~210.02 on the unstamped cigarettes.~~

553 (a)(b) Every person, firm, or corporation, other than a
554 licensee under the provisions of this part, who possesses,
555 removes, deposits, or conceals, or aids in the possessing,
556 removing, depositing, or concealing of, any unstamped cigarettes
557 in excess of 50 cartons is presumed to have knowledge that they
558 have not been taxed and commits ~~is guilty of~~ a felony of the
559 third degree, punishable as provided in s. 775.082, s. 775.083,
560 or s. 775.084.

561 (b)(e) This section does not apply to a person possessing
562 not in excess of three cartons of such cigarettes purchased by
563 such possessor outside the state in accordance with the laws of
564 the place where purchased and brought into this state by such
565 possessor. The burden of proof that such cigarettes were
566 purchased outside the state and in accordance with the laws of
567 the place where purchased shall in all cases be upon the
568 possessor of such cigarettes.

569 (9) Notwithstanding any other provision of law, the sale
570 or possession for sale of counterfeit cigarettes by any person

409965

Amendment No. (for drafter's use only)

571 or by a manufacturer, importer, distributing agent, wholesale
572 dealer, or retail dealer shall result in the seizure of the
573 product and related machinery by the division or any law
574 enforcement agency and shall be punishable as follows:

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

581 2. A subsequent violation with a total quantity of less
582 than two cartons of cigarettes or the equivalent amount of other
583 cigarettes shall be punishable by a fine not to exceed \$5,000 or
584 five times the retail value of the cigarettes involved,
585 whichever is greater, or imprisonment not to exceed 5 years, or
586 both, and shall also result in the revocation by the division of
587 the permit of the manufacturer, importer, distributing agent,
588 wholesale dealer, or retail dealer.

589 (b)1. A first violation with a total quantity of two or
590 more cartons of cigarettes or the equivalent amount of other
591 cigarettes shall be punishable by a fine not to exceed \$2,000 or
592 five times the retail value of the cigarettes involved,
593 whichever is greater, or imprisonment not to exceed 5 years, or
594 both.

595 2. A subsequent violation with a quantity of two cartons
596 of cigarettes or more or the equivalent amount of other
597 cigarettes shall be punishable by a fine not to exceed \$50,000
598 or five times the retail value of the cigarettes involved,

409965

Amendment No. (for drafter's use only)

599 whichever is greater, or imprisonment not to exceed 5 years, or
600 both, and shall also result in the revocation by the division of
601 the permit of the manufacturer, importer, distributing agent,
602 wholesale dealer, or retail dealer.

603
604 For purposes of this subsection, any counterfeit cigarettes
605 seized by the division shall be destroyed.

606 Section 22. Section 210.181, Florida Statutes, is created
607 to read:

608 210.181 Civil penalties.--

609 (1) Whoever knowingly omits, neglects, or refuses to
610 comply with any duty imposed upon him or her by this part, or to
611 do or cause to be done any of the things required by this part,
612 or does anything prohibited by this part shall, in addition to
613 any other penalty provided in this part, be liable for a fine of
614 \$1,000 or five times the retail value of the cigarettes
615 involved, whichever is greater.

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

620 Section 23. For the purpose of incorporating the amendment
621 made by this act to section 210.18, Florida Statutes, in a
622 reference thereto, paragraph (a) of subsection(1) of section
623 772.102, Florida Statutes, is reenacted to read:

624 772.102 Definitions.--As used in this chapter, the term:

Amendment No. (for drafter's use only)

- 625 (1) "Criminal activity" means to commit, to attempt to
626 commit, to conspire to commit, or to solicit, coerce, or
627 intimidate another person to commit:
- 628 (a) Any crime which is chargeable by indictment or
629 information under the following provisions:
- 630 1. Section 210.18, relating to evasion of payment of
631 cigarette taxes.
- 632 2. Section 414.39, relating to public assistance fraud.
- 633 3. Section 440.105 or s. 440.106, relating to workers'
634 compensation.
- 635 4. Part IV of chapter 501, relating to telemarketing.
- 636 5. Chapter 517, relating to securities transactions.
- 637 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
638 to dogracing and horseracing.
- 639 7. Chapter 550, relating to jai alai frontons.
- 640 8. Chapter 552, relating to the manufacture, distribution,
641 and use of explosives.
- 642 9. Chapter 562, relating to beverage law enforcement.
- 643 10. Section 624.401, relating to transacting insurance
644 without a certificate of authority, s. 624.437(4)(c)1., relating
645 to operating an unauthorized multiple-employer welfare
646 arrangement, or s. 626.902(1)(b), relating to representing or
647 aiding an unauthorized insurer.
- 648 11. Chapter 687, relating to interest and usurious
649 practices.
- 650 12. Section 721.08, s. 721.09, or s. 721.13, relating to
651 real estate timeshare plans.
- 652 13. Chapter 782, relating to homicide.

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

- 653 14. Chapter 784, relating to assault and battery.
- 654 15. Chapter 787, relating to kidnapping.
- 655 16. Chapter 790, relating to weapons and firearms.
- 656 17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
657 relating to prostitution.
- 658 18. Chapter 806, relating to arson.
- 659 19. Section 810.02(2)(c), relating to specified burglary
660 of a dwelling or structure.
- 661 20. Chapter 812, relating to theft, robbery, and related
662 crimes.
- 663 21. Chapter 815, relating to computer-related crimes.
- 664 22. Chapter 817, relating to fraudulent practices, false
665 pretenses, fraud generally, and credit card crimes.
- 666 23. Section 827.071, relating to commercial sexual
667 exploitation of children.
- 668 24. Chapter 831, relating to forgery and counterfeiting.
- 669 25. Chapter 832, relating to issuance of worthless checks
670 and drafts.
- 671 26. Section 836.05, relating to extortion.
- 672 27. Chapter 837, relating to perjury.
- 673 28. Chapter 838, relating to bribery and misuse of public
674 office.
- 675 29. Chapter 843, relating to obstruction of justice.
- 676 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
677 s. 847.07, relating to obscene literature and profanity.
- 678 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
679 849.25, relating to gambling.

409965

Amendment No. (for drafter's use only)

680 32. Chapter 893, relating to drug abuse prevention and
681 control.

682 33. Section 914.22 or s. 914.23, relating to witnesses,
683 victims, or informants.

684 34. Section 918.12 or s. 918.13, relating to tampering
685 with jurors and evidence.

686 Section 24. For the purpose of incorporating the amendment
687 made by this act to section 210.18, Florida Statutes, in a
688 reference thereto, paragraph (a) of subsection(1) of section
689 895.02, Florida Statutes, is reenacted to read:

690 895.02 Definitions.--As used in ss. 895.01-895.08, the
691 term:

692 (1) "Racketeering activity" means to commit, to attempt to
693 commit, to conspire to commit, or to solicit, coerce, or
694 intimidate another person to commit:

695 (a) Any crime which is chargeable by indictment or
696 information under the following provisions of the Florida
697 Statutes:

698 1. Section 210.18, relating to evasion of payment of
699 cigarette taxes.

700 2. Section 403.727(3)(b), relating to environmental
701 control.

702 3. Section 414.39, relating to public assistance fraud.

703 4. Section 409.920, relating to Medicaid provider fraud.

704 5. Section 440.105 or s. 440.106, relating to workers'
705 compensation.

Amendment No. (for drafter's use only)

- 706 6. Sections 499.0051, 499.0052, 499.0053, 499.0054, and
707 499.0691, relating to crimes involving contraband and
708 adulterated drugs.
- 709 7. Part IV of chapter 501, relating to telemarketing.
- 710 8. Chapter 517, relating to sale of securities and
711 investor protection.
- 712 9. Section 550.235, s. 550.3551, or s. 550.3605, relating
713 to dogracing and horseracing.
- 714 10. Chapter 550, relating to jai alai frontons.
- 715 11. Chapter 552, relating to the manufacture,
716 distribution, and use of explosives.
- 717 12. Chapter 560, relating to money transmitters, if the
718 violation is punishable as a felony.
- 719 13. Chapter 562, relating to beverage law enforcement.
- 720 14. Section 624.401, relating to transacting insurance
721 without a certificate of authority, s. 624.437(4)(c)1., relating
722 to operating an unauthorized multiple-employer welfare
723 arrangement, or s. 626.902(1)(b), relating to representing or
724 aiding an unauthorized insurer.
- 725 15. Section 655.50, relating to reports of currency
726 transactions, when such violation is punishable as a felony.
- 727 16. Chapter 687, relating to interest and usurious
728 practices.
- 729 17. Section 721.08, s. 721.09, or s. 721.13, relating to
730 real estate timeshare plans.
- 731 18. Chapter 782, relating to homicide.
- 732 19. Chapter 784, relating to assault and battery.
- 733 20. Chapter 787, relating to kidnapping.

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

- 734 21. Chapter 790, relating to weapons and firearms.
735 22. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
736 relating to prostitution.
737 23. Chapter 806, relating to arson.
738 24. Section 810.02(2)(c), relating to specified burglary
739 of a dwelling or structure.
740 25. Chapter 812, relating to theft, robbery, and related
741 crimes.
742 26. Chapter 815, relating to computer-related crimes.
743 27. Chapter 817, relating to fraudulent practices, false
744 pretenses, fraud generally, and credit card crimes.
745 28. Chapter 825, relating to abuse, neglect, or
746 exploitation of an elderly person or disabled adult.
747 29. Section 827.071, relating to commercial sexual
748 exploitation of children.
749 30. Chapter 831, relating to forgery and counterfeiting.
750 31. Chapter 832, relating to issuance of worthless checks
751 and drafts.
752 32. Section 836.05, relating to extortion.
753 33. Chapter 837, relating to perjury.
754 34. Chapter 838, relating to bribery and misuse of public
755 office.
756 35. Chapter 843, relating to obstruction of justice.
757 36. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
758 s. 847.07, relating to obscene literature and profanity.
759 37. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
760 849.25, relating to gambling.
761 38. Chapter 874, relating to criminal street gangs.

409965

Amendment No. (for drafter's use only)

762 39. Chapter 893, relating to drug abuse prevention and
763 control.

764 40. Chapter 896, relating to offenses related to financial
765 transactions.

766 41. Sections 914.22 and 914.23, relating to tampering with
767 a witness, victim, or informant, and retaliation against a
768 witness, victim, or informant.

769 42. Sections 918.12 and 918.13, relating to tampering with
770 jurors and evidence.

771 Section 25. For the 2004-2005 fiscal year, the sum of
772 \$480,028 is appropriated from the Alcoholic Beverage and Tobacco
773 Trust Fund and four full-time equivalent positions are
774 authorized to be established by the Department of Business and
775 Professional Regulation for the purpose of conducting regulatory
776 activities related to the transportation and sale of cigarettes.

777 Section 26. From the funds generated by this act, the sum
778 of \$2 million is appropriated to the Department of Health to
779 address health care disparities in the minority community.

780 Section 27. Subsection (2) of section 17.41, Florida
781 Statutes, is amended to read:

782 17.41 Department of Financial Services Tobacco Settlement
783 Clearing Trust Fund.--

784 (2) Funds to be credited to the Tobacco Settlement
785 Clearing Trust Fund shall consist of payments received by the
786 state from settlement of State of Florida v. American Tobacco
787 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996) and fees from the
788 nonsettling-manufacturer fee collected pursuant to s. 210.0205.
789 Moneys received from the settlement and fees and deposited into

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

790 the trust fund are exempt from the service charges imposed under
791 s. 215.20.

792
793 Proceeds shall be distributed for restoring services, to
794 individuals receiving residential habilitation and adult day
795 training services under the Developmental Disabilities Home and
796 Community Based Services Waiver whose services were reduced on
797 November 1, 2004.

798 Section 28. This act shall take effect upon becoming a
799 law.

800
801 ===== T I T L E A M E N D M E N T =====

802 On page 2, remove line 15, and insert:
803 creating s. 210.0205, F.S.; providing definitions;
804 imposing a fee on certain cigarettes; providing payment
805 requirements; requiring reporting of the number and
806 denominations of stamps affixed to individual packages of
807 certain cigarettes by manufacturer and brand family;
808 authorizing rulemaking regarding such reports; requiring
809 registration with the Division of Alcoholic Beverages and
810 Tobacco of the Department of Business and Professional
811 Regulation of nonsettling manufacturers of cigarettes;
812 requiring development, maintenance, and publication by the
813 division of a list of nonsettling manufacturers of
814 cigarettes which have certified their compliance with this
815 act; treating cigarettes of certain manufacturers that
816 have not paid the fee imposed by this act or that have not
817 complied with reporting requirements as cigarettes for

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

818 | which the tax imposed by s. 210.02, F.S., has not been
819 | paid; prohibiting the stamping of certain cigarettes for
820 | which the fee imposed by this act has not been paid in
821 | full or the nonsettling manufacturer of which has not
822 | complied with reporting requirements; amending s. 210.01,
823 | F.S.; revising and providing definitions; amending s.
824 | 210.05, F.S.; providing stamp requirements for cigarettes
825 | in transport; providing stamp exceptions for certain
826 | cigarettes; requiring transporters of certain cigarettes
827 | to submit certain reports; amending s. 210.06, F.S.;
828 | revising requirements for and limitations on the
829 | affixation of stamps; providing requirements with respect
830 | to receipt, possession, storage, and transport of
831 | unstamped cigarette packages; creating s. 210.085, F.S.;
832 | requiring manufacturers, importers, distributing agents,
833 | dealers, and retail dealers to hold a current, valid
834 | permit to sell, distribute, or receive cigarettes;
835 | amending s. 210.09, F.S.; providing notice and filing
836 | guidelines for certain person shipping unstamped cigarette
837 | packages; authorizing certain law enforcement officials to
838 | inspect certain shipping vehicles; amending s. 210.12,
839 | F.S.; authorizing the state to claim certain property and
840 | materials from certain dealers and retailers who attempt
841 | to defraud the state; authorizing the destruction of
842 | certain cigarettes; amending s. 210.15, F.S.; providing
843 | criteria for permit application; prohibiting issuance,
844 | maintenance, or renewal of certain permits for certain
845 | applicants; providing guidelines for permit application

409965

Amendment No. (for drafter's use only)

846 denial; amending s. 210.18, F.S.; expanding the group of
847 violators subject to criminal liability; prohibiting the
848 sale or possession for sale of counterfeit cigarettes;
849 providing penalties; creating s. 210.181, F.S.; providing
850 civil penalties for failure to comply with certain duties
851 or pay certain taxes; reenacting ss. 772.102(1)(a) and
852 895.02(1)(a), F.S., relating to crimes constituting a
853 "criminal activity" and definitions as used in the Florida
854 RICO Act, to incorporate the amendment to s. 210.18, F.S.,
855 in references thereto; providing an appropriation and
856 authorizing positions; providing an appropriation to the
857 Department of Health; providing purposes; amending s.
858 17.41, F.S.; providing additional source of revenue to the
859 Tobacco Settlement Trust Fund; requiring proceeds to be
860 distributed to certain individuals for restoration
861 services; providing an effective date.

862
863 WHEREAS, it is the intent of the Legislature to prevent
864 nonsettling manufacturers from undermining the state's policy of
865 reducing underage smoking by offering their cigarettes for sale
866 substantially below the price of cigarettes of other
867 manufacturers; to protect the tobacco settlement agreement and
868 funding, which is reduced as a result of the growth of
869 nonsettling-manufacturer cigarette sales, for programs funded in
870 whole or in part by payments to the state under the tobacco
871 settlement agreement and to recoup for the state settlement-
872 payment revenue lost to the state as a result of nonsettling-
873 manufacturer cigarette sales; to fund enforcement and

409965

HOUSE AMENDMENT

Bill No. CS/CS/CS/SB 2676

Amendment No. (for drafter's use only)

874 administration of nonsettling-manufacturer legislation and the
875 fee imposed in this act, including reasonable administrative
876 costs incurred by wholesale dealers complying with any
877 additional reporting requirements necessitated by this act; and
878 to fund such other purposes as the Legislature determines, NOW,
879 THEREFORE,

409965