

By Senator Haridopolos

26-1518-04

See HB 1459

1                                   A bill to be entitled  
2           An act relating to transportation and sale of  
3           cigarettes; amending s. 210.01, F.S.; revising  
4           and providing definitions; amending s. 210.05,  
5           F.S.; providing stamp requirements for  
6           cigarettes in transport; providing stamp  
7           exceptions for certain cigarettes; requiring  
8           transporters of certain cigarettes to submit  
9           certain reports; amending s. 210.06, F.S.;  
10          revising requirements for and limitations on  
11          the affixation of stamps; providing  
12          requirements with respect to receipt,  
13          possession, storage, and transport of unstamped  
14          cigarette packages; creating s. 210.085, F.S.;  
15          requiring manufacturers, importers,  
16          distributing agents, dealers, and retail  
17          dealers to hold a current, valid permit to  
18          sell, distribute, or receive cigarettes;  
19          amending s. 210.09, F.S.; providing notice and  
20          filing guidelines for certain person shipping  
21          unstamped cigarette packages; authorizing  
22          certain law enforcement officials to inspect  
23          certain shipping vehicles; requiring wholesale  
24          dealers to submit certain reports; providing  
25          criteria for reports; authorizing the Division  
26          of Alcoholic Beverages and Tobacco to adopt  
27          rules; providing for access to certain records;  
28          amending s. 210.12, F.S.; authorizing the state  
29          to claim certain property and materials from  
30          certain dealers and retailers who attempt to  
31          defraud the state; authorizing the destruction

1 of certain cigarettes; amending s. 210.15,  
2 F.S.; providing criteria for permit  
3 application; prohibiting issuance, maintenance,  
4 or renewal of certain permits for certain  
5 applicants; providing guidelines for permit  
6 application denial; amending s. 210.18, F.S.;  
7 expanding the group of violators subject to  
8 criminal liability; prohibiting the sale or  
9 possession for sale of counterfeit cigarettes;  
10 providing penalties; creating s. 210.181, F.S.;  
11 providing civil penalties for failure to comply  
12 with certain duties or pay certain taxes;  
13 providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Subsections (6) and (7) of section 210.01,  
18 Florida Statutes, are amended, and subsections (19) through  
19 (23) are added to that section, to read:

20 210.01 Definitions.--When used in this part the  
21 following words shall have the meaning herein indicated:

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

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1 current permits under s. 210.15 or to an export warehouse  
2 proprietor or another manufacturer.

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

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

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

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

17 (22) "Counterfeit cigarettes" means cigarettes that  
18 have false manufacturing labels, tobacco product packs without  
19 tax stamps or with counterfeit tax stamps, or any combination  
20 thereof.

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

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1 Section 2. 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) On or before the 10th day of each month, a person  
17 who transports or causes to be transported from this state  
18 cigarettes for sale in another state shall submit to the  
19 division a report identifying the quantity and brand family of  
20 each brand of the cigarettes transported or caused to be  
21 transported in the preceding calendar quarter and the name and  
22 address of each recipient of the cigarettes.

23 (d) For purposes of this section, the term "person"  
24 means an individual, partnership, committee, association,  
25 corporation, or any other organization or group of persons.  
26 Person does not include any common or contract carrier, or  
27 public warehouse that is not owned, in whole or in part,  
28 directly or indirectly, by such person.

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

1           210.06 Affixation of stamps; presumption.--  
2           (1) Every dealer within ~~or without~~ the state shall  
3 affix or cause to be affixed to such package or container of  
4 such cigarettes such, stamps as are required under this  
5 section within 10 days after receipt of such products. Dealers  
6 outside this state shall affix such stamps before the shipment  
7 of cigarettes into this state, evidencing the payment of the  
8 tax imposed by virtue of this part before such cigarettes are  
9 offered for sale or use or consumed or before they are  
10 otherwise disposed of in the state.  
11           (a) A tax stamp shall be applied to all cigarette  
12 packages intended for sale or distribution to consumers  
13 subject to the tax imposed under s. 210.02, including  
14 cigarettes subject to reduced state tax under s. 210.04(4)(b).  
15           (b) No stamp shall be applied to any cigarette package  
16 exempt from tax under 26 U.S.C. s. 5704 that is distributed by  
17 a manufacturer pursuant to federal regulations.  
18           (c) Dealers may apply stamps only to cigarette  
19 packages received directly from a manufacturer or importer of  
20 cigarettes who possesses a valid and current permit under 26  
21 U.S.C. s. 5712.  
22           (5) Except as provided in s. 210.09(1), no person,  
23 other than a dealer that receives unstamped cigarette packages  
24 directly from a cigarette manufacturer or importer in  
25 accordance with this section and s. 210.085, shall hold or  
26 possess an unstamped cigarette package. Dealers shall be  
27 permitted to set aside, without application of stamps, only  
28 such part of the dealer's stock that is identified for sale or  
29 distribution outside this state. If a dealer maintains stocks  
30 of unstamped cigarette packages, such unstamped packages shall  
31 be stored separately from stamped product packages. No

1 unstamped cigarette packages shall be transferred by a dealer  
2 to another facility of the dealer within this state or to  
3 another person within this state.

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

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

23 Section 5. Subsections (1) and (2) of section 210.09,  
24 Florida Statutes, are amended, and subsection (6) is added to  
25 that section, 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 dealer holding a valid,  
7 current permit pursuant to s. 210.15 shall first file with the  
8 division a notice of such shipment. This paragraph shall not  
9 apply to any common or contract carrier that is transporting  
10 cigarettes through this state to another location outside this  
11 state under a proper bill of lading or freight bill that  
12 states the quantity, source, and destination of such  
13 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 (2)(a) Except as otherwise provided in this  
22 subsection, the division is authorized to prescribe and  
23 promulgate by rules and regulations, which shall have the  
24 force and effect of the law, such records to be kept and  
25 reports to be made to the division by any distributing agent,  
26 wholesale dealer, retail dealer, common carrier, or any other  
27 person handling, transporting or possessing cigarettes for  
28 sale or distribution within the state as may be necessary to  
29 collect and properly distribute the taxes imposed by s.  
30 210.02. All reports shall be made on or before the 10th day of  
31 the month following the month for which the report is made,

1 unless the division by rule or regulation shall prescribe that  
2 reports be made more often.

3 (b) Each wholesale dealer shall submit to the division  
4 monthly reports setting forth the following information,  
5 itemized or submitted separately for each place of business of  
6 such dealer:

7 1. The quantities of cigarettes, by brand family, on  
8 hand both at the beginning and end of the reporting period.

9 2. The quantities of cigarettes, by brand family and  
10 transaction, that were received during the reporting period  
11 and the name and address of each person from whom those  
12 products were received.

13 3. The quantities of cigarettes, by brand family and  
14 transaction, distributed or shipped during the reporting  
15 period, other than sales directly to consumers, and the name  
16 and address of each person to whom those products were  
17 distributed or shipped.

18 (c) Manufacturers and importers shipping cigarettes  
19 into or within this state shall file a monthly report with the  
20 division containing the information regarding such cigarettes  
21 set forth in paragraph (b).

22 (d) The reports submitted pursuant to paragraphs (a),  
23 (b), and (c) shall be further itemized to disclose the  
24 quantity of reported cigarettes bearing tax stamps of this  
25 state, stamps of another state, and unstamped cigarettes,  
26 itemized to show, if known, the portion of the unstamped  
27 cigarettes that are intended for sale or distribution in this  
28 state. Dealer reports shall include, if applicable, the  
29 quantity of tax stamps of this state that were not affixed to  
30 cigarettes and that were on hand at the beginning and end of  
31 the reporting period, the quantity of each type of stamp of



1 this state received during the reporting period, and the  
2 quantity of each type of stamp of this state applied during  
3 the reporting period.

4 (e) The division may adopt rules requiring such  
5 additional information in the monthly reports as is necessary  
6 or appropriate for purposes of enforcing the provisions of  
7 this part.

8 (6) The United States Secretary of the Treasury or his  
9 or her designee shall have access to records and reports  
10 required by this section. The division may share such records  
11 and reports with law enforcement officials of this state, the  
12 Federal Government, or other states.

13 Section 6. Subsection (1) of section 210.12, Florida  
14 Statutes, is amended, subsections (2) through (6) of that  
15 section are renumbered as subsections (4) through (8),  
16 respectively, and new subsections (2) and (3) are added to  
17 that section, to read:

18 210.12 Seizures; forfeiture proceedings.--

19 (1) The state, acting by and through the division,  
20 shall be authorized and empowered to seize, confiscate, and  
21 ~~forfeit for the use and benefit of the state,~~any cigarettes  
22 upon which taxes payable hereunder may be unpaid or that are  
23 otherwise held in violation of the requirements of this  
24 chapter, and also any vending machine or receptacle in which  
25 ~~such~~ cigarettes upon which taxes have not been paid are held  
26 for sale, or any vending machine that does not have affixed  
27 thereto the identification sticker required by the provisions  
28 of s. 210.07, or which does not display at all times at least  
29 one package of each brand of cigarettes located therein so the  
30 same is clearly visible and arranged in such a manner that the  
31 cigarette tax stamp or meter impression of the stamp affixed

1 thereto is clearly visible. Such seizure may be made by the  
2 division, its duly authorized representative, any sheriff or  
3 deputy sheriff, or any police officer.

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

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

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

17 210.15 Permits.--

18 (1)(a) Every person, firm, or corporation desiring to  
19 engage in business as a manufacturer, importer, exporter,  
20 distributing agent, or wholesale dealer of cigarettes ~~deal in~~  
21 ~~cigarettes as a distributing agent, wholesale dealer, or~~  
22 ~~exporter~~ within this state shall file with the division an  
23 application for a cigarette permit for each place of business  
24 located within this state or, in the absence of such place of  
25 business in this state, for wherever its principal place of  
26 business is located ~~with the Division of Alcoholic Beverages~~  
27 ~~and Tobacco~~. Every application for a cigarette permit shall be  
28 made on forms furnished by the division and shall set forth  
29 the name under which the applicant transacts or intends to  
30 transact business, the location of the applicant's place of  
31 business within the state, if any, and such other information

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

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

24 (c) Permits ~~The permit for a distributing agent,~~  
25 ~~wholesale dealer, or exporter~~ shall be issued only to persons  
26 of good moral character, who are not less than 18 years of  
27 age. ~~Distributing agent, wholesale dealer, or exporter~~ Permits  
28 to corporations shall be issued only to corporations whose  
29 officers are of good moral character and not less than 18  
30 years of age. There shall be no exemptions from the permit

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1 fees herein provided to any persons, association of persons,  
2 or corporation, any law to the contrary notwithstanding.

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

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

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

11 3. Has been convicted of selling stolen or counterfeit  
12 cigarettes, receiving stolen cigarettes, or being involved in  
13 the counterfeiting of cigarettes; or

14 4. Has been convicted in this state, any other state,  
15 or the United States of any offense designated as a felony by  
16 such state or the United States within 15 years prior to  
17 applying for a permit to any person who has been convicted  
18 within the past 5 years of any offense against the cigarette  
19 laws of this state or who has been convicted in this state,  
20 any other state, or the United States during the past 5 years  
21 of any offense designated as a felony by such state or the  
22 United States, or to a corporation, any of whose officers have  
23 been so convicted. The term "convicted" "conviction" shall  
24 include an adjudication of guilt on a plea of guilty or a plea  
25 of nolo contendere, or the forfeiture of a bond when charged  
26 with a crime.

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

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

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

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

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

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

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

4           210.18 Penalties for tax evasion; reports by  
5 sheriffs.--

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

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

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

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

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

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

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

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

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

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

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1 For purposes of this subsection, any counterfeit cigarettes  
2 seized by the division shall be destroyed.  
3       Section 9. Section 210.181, Florida Statutes, is  
4 created to read:  
5       210.181 Civil penalties.--  
6       (1) Whoever knowingly omits, neglects, or refuses to  
7 comply with any duty imposed upon him or her by this part, or  
8 to do or cause to be done any of the things required by this  
9 part, or does anything prohibited by this part shall, in  
10 addition to any other penalty provided in this part, be liable  
11 for a fine of \$1,000 or five times the retail value of the  
12 cigarettes involved, whichever is greater.  
13       (2) Whoever fails to pay any tax imposed by this part  
14 at the time prescribed by law or rules shall, in addition to  
15 any other penalty provided in this part, be liable for a  
16 penalty of five times the unpaid tax due.  
17       Section 10. This act shall take effect upon becoming a  
18 law.  
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