

By the Committee on Regulated Industries; and Senator
Haridopolos

315-2215-04

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; amending s. 210.12,
24 F.S.; authorizing the state to claim certain
25 property and materials from certain dealers and
26 retailers who attempt to defraud the state;
27 authorizing the destruction of certain
28 cigarettes; amending s. 210.15, F.S.; providing
29 criteria for permit application; prohibiting
30 issuance, maintenance, or renewal of certain
31 permits for certain applicants; providing

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

10

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

12

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

16

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

18

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

29

(7) "Retail dealer" means any person located inside or
30 outside this state other than a wholesale dealer engaged in

31

1 the business of selling cigarettes, including persons licensed
2 pursuant to s. 569.003.

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

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

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

13 (22) "Counterfeit cigarettes" means cigarettes that
14 have false manufacturing labels, tobacco product packs without
15 tax stamps or with counterfeit tax stamps, or any combination
16 thereof.

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

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

29 210.05 Preparation and sale of stamps; discount.--

30 (6)(a) A person may not transport or cause to be
31 transported from this state cigarettes for sale in another

1 state without first affixing to the cigarettes the stamp
2 required by the state in which the cigarettes are to be sold
3 or paying any other excise tax on the cigarettes imposed by
4 the state in which the cigarettes are to be sold.

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

11 (c) On or before the 10th day of each month, a person
12 who transports or causes to be transported from this state
13 cigarettes for sale in another state shall submit to the
14 division a report identifying the quantity and brand family of
15 each brand of the cigarettes transported or caused to be
16 transported in the preceding calendar month and the name and
17 address of each recipient of the cigarettes.

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

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

27 210.06 Affixation of stamps; presumption.--

28 (1) Every dealer within ~~or without~~ the state shall
29 affix or cause to be affixed to such package or container of
30 such cigarettes such, stamps as are required under this
31 section within 10 days after receipt of such products. Dealers

1 outside this state shall affix such stamps before the shipment
2 of cigarettes into this state, ~~evidencing the payment of the~~
3 ~~tax imposed by virtue of this part before such cigarettes are~~
4 ~~offered for sale or use or consumed or before they are~~
5 ~~otherwise disposed of in the state.~~

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

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

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

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

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

1 210.085 Transactions only with permitted
2 manufacturers, importers, distributing agents, dealers, and
3 retail dealers.--A manufacturer, importer, or distributing
4 agent may sell or distribute cigarettes to a person located or
5 doing business within this state, including on any tribal
6 lands located within the borders of this state, only if such
7 person is a dealer with a valid, current permit under s.
8 210.15. A dealer may sell or distribute cigarettes to a person
9 located or doing business within this state, including on any
10 tribal lands located within the borders of this state, only if
11 such person is a dealer or retail dealer with a valid, current
12 permit under s. 569.003. A dealer may obtain cigarettes only
13 from a manufacturer or importer who possesses a valid, current
14 permit under 26 U.S.C. s. 5712 or from a distributing agent or
15 dealer with a valid, current permit under s. 210.15. A retail
16 dealer may obtain cigarettes only from a manufacturer or
17 dealer with a valid, current permit under s. 210.15.

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

20 210.09 Records to be kept; reports to be made;
21 examination.--

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

30 (b) Any person who ships unstamped cigarette packages
31 into this state other than to a dealer holding a valid,

1 current permit pursuant to s. 210.15 shall first file with the
2 division a notice of such shipment. This paragraph shall not
3 apply to any common or contract carrier that is transporting
4 cigarettes through this state to another location outside this
5 state under a proper bill of lading or freight bill that
6 states the quantity, source, and destination of such
7 cigarettes.

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

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

20 210.12 Seizures; forfeiture proceedings.--

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

1 same is clearly visible and arranged in such a manner that the
2 cigarette tax stamp or meter impression of the stamp affixed
3 thereto is clearly visible. Such seizure may be made by the
4 division, its duly authorized representative, any sheriff or
5 deputy sheriff, or any police officer.

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

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

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

19 210.15 Permits.--

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

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

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

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

1 years of age. There shall be no exemptions from the permit
2 fees herein provided to any persons, association of persons,
3 or corporation, any law to the contrary notwithstanding.

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

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

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

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

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

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

1 issued to a firm or corporation prohibited from obtaining such
2 permit under the cigarette law may be revoked by the division.
3 (f)~~(e)~~ Prior to an application for a distributing
4 agent, wholesale dealer, or exporter permit being approved,
5 the applicant shall file a set of fingerprints on forms
6 provided by the division. The applicant shall also file a set
7 of fingerprints for any person or persons interested directly
8 or indirectly with the applicant in the business for which the
9 permit is being sought, when so required by the division. If
10 the applicant or any person interested with the applicant,
11 either directly or indirectly, in the business for which the
12 permit is sought shall be such a person as is within the
13 definition of persons to whom a ~~distributing agent, wholesale~~
14 ~~dealer, or exporter~~ permit shall be denied, then the
15 application may be denied by the division. If the applicant is
16 a partnership, all members of the partnership are required to
17 file said fingerprints, or if a corporation, all principal
18 officers of the corporation are required to file said
19 fingerprints. The cigarette permit for a wholesale dealer or
20 exporter shall be originally issued at a fee of \$100, which
21 sum is to cover the cost of the investigation required before
22 issuing such permit.
23 (g)~~(f)~~ The cigarette permits issued under this section
24 ~~permit for a wholesale dealer or exporter~~ shall be renewed
25 from year to year ~~as a matter of course,~~ at an annual cost of
26 \$100, on or before July 1, upon making application to the
27 division and upon payment of the annual renewal fee.
28 (h)~~(g)~~ Permittees, by acceptance of their permits,
29 agree that their places of business or vehicles transporting
30 cigarettes shall always be subject to be inspected and
31 searched without a search warrant for the purpose of

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

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

26 Section 8. Subsections (2), (3), and (6) of section
27 210.18, Florida Statutes, are amended, and subsection (9) is
28 added to that section, to read:

29 210.18 Penalties for tax evasion; reports by
30 sheriffs.--

31

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

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

26 (6)(a) ~~Every person, firm, or corporation, other than~~
27 ~~a licensee under the provisions of this part, who possesses,~~
28 ~~removes, deposits, or conceals, or aids in the possessing,~~
29 ~~removing, depositing, or concealing of, any unstamped~~
30 ~~cigarettes not in excess of 50 cartons is guilty of a~~
31 ~~misdemeanor of the second degree, punishable as provided in s.~~

1 ~~775.082 or s. 775.083. In lieu of the penalties provided in~~
2 ~~those sections, however, the person, firm, or corporation may~~
3 ~~pay the tax plus a penalty equal to the amount of the tax~~
4 ~~authorized under s. 210.02 on the unstamped cigarettes.~~

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

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

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

27 (a)1. A first violation with a total quantity of less
28 than two cartons of cigarettes or the equivalent amount of
29 other cigarettes shall be punishable by a fine not to exceed
30 \$1,000 or five times the retail value of the cigarettes

31

1 involved, whichever is greater, or imprisonment not to exceed
2 5 years, or both.

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

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

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

25
26 For purposes of this subsection, any counterfeit cigarettes
27 seized by the division shall be destroyed.

28 Section 9. Section 210.181, Florida Statutes, is
29 created to read:

30 210.181 Civil penalties.--
31

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

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

12 Section 10. This act shall take effect upon becoming a
13 law.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 2676

18 In s. 210.05(6)(c), F.S., the committee substitute changes
19 from quarter to month the period covered by the required
report. In s. 210.06(1)(a), F.S., it deletes the reference to
20 cigarettes subject to the reduced state tax under s.
210.04(4)(b), F.S., and adds a reference to any exemption
21 otherwise provided in the act. It deletes the monthly
reporting requirements in s. 210.09(2), F.S. In s.
22 210.15(1)(d)4., F.S., it restores current law regarding a
conviction within 5 years of an application for permit, and
23 deletes the provision regarding conviction within 15 years of
such application.