

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

29 reports; amending s. 210.06, F.S.; revising requirements  
30 for and limitations on the affixation of stamps; providing  
31 requirements with respect to receipt, possession, storage,  
32 and transport of unstamped cigarette packages; creating s.  
33 210.085, F.S.; requiring manufacturers, importers,  
34 distributing agents, dealers, and retail dealers to hold a  
35 current, valid permit to sell, distribute, or receive  
36 cigarettes; amending s. 210.09, F.S.; providing notice and  
37 filing guidelines for certain person shipping unstamped  
38 cigarette packages; authorizing certain law enforcement  
39 officials to inspect certain shipping vehicles; amending  
40 s. 210.12, F.S.; authorizing the state to claim certain  
41 property and materials from certain dealers and retailers  
42 who attempt to defraud the state; authorizing the  
43 destruction of certain cigarettes; amending s. 210.15,  
44 F.S.; providing criteria for permit application;  
45 prohibiting issuance, maintenance, or renewal of certain  
46 permits for certain applicants; providing guidelines for  
47 permit application denial; amending s. 210.18, F.S.;  
48 expanding the group of violators subject to criminal  
49 liability; prohibiting the sale or possession for sale of  
50 counterfeit cigarettes; providing penalties; creating s.  
51 210.181, F.S.; providing civil penalties for failure to  
52 comply with certain duties or pay certain taxes;  
53 reenacting ss. 772.102(1)(a) and 895.02(1)(a), F.S.,  
54 relating to crimes constituting a "criminal activity" and  
55 definitions as used in the Florida RICO Act, to  
56 incorporate the amendment to s. 210.18, F.S., in

57 | references thereto; providing an appropriation and  
 58 | authorizing positions; providing an appropriation to the  
 59 | Department of Health; providing purposes; amending s.  
 60 | 17.41, F.S.; providing additional source of revenue to the  
 61 | Tobacco Settlement Clearing Trust Fund; providing an  
 62 | effective date.

63 |  
 64 | WHEREAS, it is the intent of the Legislature to prevent  
 65 | nonsettling manufacturers from undermining the state's policy of  
 66 | reducing underage smoking by offering their cigarettes for sale  
 67 | substantially below the price of cigarettes of other  
 68 | manufacturers; to protect the tobacco settlement agreement and  
 69 | funding, which is reduced as a result of the growth of  
 70 | nonsettling manufacturer cigarette sales, for programs funded in  
 71 | whole or in part by payments to the state under the tobacco  
 72 | settlement agreement and to recoup for the state settlement-  
 73 | payment revenue lost to the state as a result of nonsettling  
 74 | manufacturer cigarette sales; to fund enforcement and  
 75 | administration of nonsettling manufacturer legislation and the  
 76 | fee imposed in this act, including reasonable administrative  
 77 | costs incurred by wholesale dealers complying with any  
 78 | additional reporting requirements necessitated by this act; and  
 79 | to fund such other purposes as the Legislature determines, NOW,  
 80 | THEREFORE,

81 |  
 82 | Be It Enacted by the Legislature of the State of Florida:

83 |  
 84 | Section 1. Section 210.0205, Florida Statutes, is created

85 to read:

86 210.0205 Nonsettling manufacturer fee.--

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

88 (a) "Brand family" means all styles of cigarettes sold  
 89 under the same trademark and differentiated from one another by  
 90 means of additional modifiers or descriptors, including, but not  
 91 limited to, "menthol," "lights," "kings," and "100s." The term  
 92 includes any brand name, alone or in conjunction with any other  
 93 word, trademark, logo, symbol, motto, selling message,  
 94 recognizable pattern of colors, or other indicia of product  
 95 identification identical or similar to, or identifiable with, a  
 96 previously known brand of cigarettes.

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

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

104 (d) "Nonsettling manufacturer" means any tobacco product  
 105 manufacturer that has not entered into the tobacco settlement  
 106 agreement defined in s. 215.56005(1)(f), or into the Attorneys  
 107 General Settlement Agreement with Brooke Group, Ltd., Liggett &  
 108 Myers, Inc., and Liggett Group, Inc. dated March 15, 1996.

109 (e) "Nonsettling manufacturer cigarettes" means cigarettes  
 110 manufactured by a nonsettling manufacturer, except when payments  
 111 on such cigarettes are due to be made by a settling manufacturer  
 112 pursuant to a tobacco settlement agreement described in

113 paragraph (d).

114 (2) A fee, in addition to all other taxes or fees of every  
115 kind imposed by law, is imposed upon the sale, receipt,  
116 purchase, possession, consumption, handling, distribution, and  
117 use in this state of nonsettling manufacturer cigarettes to the  
118 package of which an agent affixes a stamp or stamp insignia as  
119 required by law or which are sold or purchased in the state but  
120 are not required to bear a stamp or stamp insignia of this  
121 state. The fee is in the amount of 20 mills per cigarette.  
122 Beginning January 1, 2007, and on January 1 of each year  
123 thereafter, the division shall adjust the tax rate by the  
124 greater of 3 percent or the percentage change in the average of  
125 the Consumer Price Index issued by the United States Department  
126 of Labor for the most recent 12-month period ending September 30  
127 compared to the 12-month period ending September 30 of the prior  
128 year.

129 (3) The division shall collect the fee once each month  
130 from each nonsettling manufacturer based on information received  
131 pursuant to subsection (6). The division shall mail to each  
132 nonsettling manufacturer not later than the 15th day of each  
133 month a notice of the fee due from that manufacturer for sales  
134 of its cigarettes made in the preceding month. Each such  
135 nonsettling manufacturer shall ensure that the division has  
136 received payment of the fee in full no later than the last day  
137 of the month in which the notice was mailed. Except as otherwise  
138 provided in this section, proceeds from the fee shall be  
139 deposited into the Tobacco Settlement Clearing Trust Fund and  
140 the fee shall be imposed, collected, paid, administered, and

141 enforced in the same manner as the tax on cigarettes imposed by  
 142 s. 210.02.

143 (4) A nonsettling manufacturer selling cigarettes in this  
 144 state on the effective date of this act shall provide to the  
 145 division the information described in subsections (7) and (8)  
 146 and pay the fee imposed by subsection (2) within 30 days after  
 147 the effective date of this act. If a nonsettling manufacturer is  
 148 not selling cigarettes in this state on the effective date of  
 149 this act, before commencing sales of cigarettes in this state,  
 150 the nonsettling manufacturer shall prepay the fee imposed by  
 151 subsection (2). The prepayment amount shall be a sum determined  
 152 by multiplying by 20 mills the number of cigarettes the division  
 153 reasonably projects that the nonsettling manufacturer will sell  
 154 in this state in the first calendar month or \$50,000, whichever  
 155 is more. The division may require a nonsettling manufacturer to  
 156 provide any information reasonably necessary to determine the  
 157 amount of the prepayment fee and, in the case of prepayment,  
 158 shall establish procedures for providing reimbursement to  
 159 nonsettling manufacturers if actual sales are less than sales  
 160 projected by the division and for additional payment by  
 161 nonsettling manufacturers if actual sales are greater than sales  
 162 projected by the division. As used in this subsection, the term  
 163 "cigarettes" refers only to nonsettling manufacturer cigarettes.

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

165 (a) Prevent nonsettling manufacturers from undermining the  
 166 state's policy of reducing underage smoking by offering  
 167 cigarettes for sale substantially below the price of cigarettes  
 168 of other manufacturers.

169       (b)1. Protect the tobacco settlement agreement, as defined  
 170 in s. 215.56005(1)(f), and funding, which is reduced as a result  
 171 of the growth of nonsettling manufacturer cigarette sales, for  
 172 programs funded in whole or in part by payments to the state  
 173 under the tobacco settlement agreement; and

174       2. Recoup for the state settlement payment revenue lost to  
 175 the state as a result of nonsettling manufacturer cigarette  
 176 sales.

177       (c) Fund enforcement and administration of nonsettling  
 178 manufacturer legislation and the fee imposed by this section,  
 179 including reasonable administrative costs incurred by wholesale  
 180 dealers complying with any additional reporting requirements  
 181 necessitated by this section.

182       (d) Fund such other purposes as the Legislature  
 183 determines; however, \$16 million of the proceeds received under  
 184 this act shall be provided annually through quarterly  
 185 disbursements to the Department of Health, for the purposes of  
 186 implementing a statewide anti-smoking marketing, educational,  
 187 and advertising campaign to reduce youth tobacco use. The  
 188 Department of Health shall conduct surveillance and evaluations  
 189 to measure program performance and improve implementation  
 190 strategies. The Department of Health may contract for any of the  
 191 activities specified in this section.

192       (6) Monthly reports shall be made to the division pursuant  
 193 to s. 210.09(2) by each agent and wholesaler. Such reports shall  
 194 state the number and denominations of stamps or stamp insignia  
 195 affixed to individual packages of nonsettling manufacturer  
 196 cigarettes and the number of individual packages of nonsettling

197 manufacturer cigarettes otherwise sold or purchased in this  
 198 state or otherwise handled or distributed in this state for sale  
 199 in another state, commonwealth, or territory of the United  
 200 States, by manufacturer and brand family, sold for each place of  
 201 business in the month preceding the month in which the report is  
 202 made. The division may adopt rules requiring any agent,  
 203 wholesaler, wholesale dealer, or nonsettling manufacturer to  
 204 provide in the monthly report any information necessary or  
 205 appropriate to determining the fee due under subsection (2) or  
 206 to enforcing this act.

207 (7) Before commencing sales of cigarettes in this state  
 208 or, if selling cigarettes in this state on the effective date of  
 209 this act, within 30 days after the effective date of this act, a  
 210 nonsettling manufacturer shall provide to the division, on a  
 211 form prescribed by the division:

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

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

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

218 (d) A statement of the nonsettling manufacturer's  
 219 intention to comply with the obligations imposed by this  
 220 section.

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

224 (8) Each nonsettling manufacturer subject to the fee



225 imposed by subsection (2) shall certify to the division on the  
226 first day of each month that the manufacturer is in compliance  
227 with this section and has paid in full the fee imposed by  
228 subsection (2). The division shall develop, maintain, and  
229 publish on its Internet website a directory listing all  
230 nonsettling manufacturers that have provided current, accurate,  
231 and complete certifications. The division shall provide a copy  
232 of the list to any person upon request.

233 (9) Cigarettes of a nonsettling manufacturer that has not  
234 paid a fee imposed by subsection (2) or that has not complied  
235 with the reporting requirements of subsections (4), (6), (7),  
236 and (8) shall be treated as cigarettes for which the tax imposed  
237 by s. 210.02 has not been paid. A person shall not affix to any  
238 package of nonsettling manufacturer cigarettes the stamp  
239 required under s. 210.06, or otherwise purchase or sell such  
240 cigarettes, after such person receives notice from the division  
241 that the nonsettling manufacturer of such cigarettes has not  
242 paid in full the fee imposed by subsection (2) or if the  
243 nonsettling manufacturer is not listed on the division's  
244 directory described in subsection (8).

245 (10) The fee imposed by this section does not apply to a  
246 subsequent participating manufacturer, as defined in the master  
247 settlement agreement, until the effective date of a credit  
248 amendment to the master settlement agreement. For purposes of  
249 this subsection, the term "master settlement agreement" means  
250 the settlement agreement and related documents entered into in  
251 1998 by 46 states and leading United States tobacco  
252 manufacturers. An amendment to the master settlement agreement

253 shall be considered a credit amendment if such amendment makes  
 254 available to each subsequent participating manufacturer, other  
 255 than any subsequent participating manufacturer that has an  
 256 agreement as of the effective date of this act, each year a  
 257 credit against its payment obligations under the master  
 258 settlement agreement equal to or greater than the product of the  
 259 total number of individual cigarettes sold by a subsequent  
 260 participating manufacturer in this state during the year in  
 261 question, multiplied by at least 73.2 percent of the per  
 262 cigarette fee provided for in this section, and does not  
 263 condition that credit on such subsequent participating  
 264 manufacturer forfeiting in whole or in part any other benefits  
 265 or credits provided for in the master settlement agreement. This  
 266 subsection does not apply to any subsequent participating  
 267 manufacturer that as of the effective date of this act already  
 268 had an agreement with the settling states, as defined in the  
 269 master settlement agreement, pursuant to which agreement the  
 270 subsequent participating manufacturer has agreed to a different  
 271 credit against its payment obligations under the master  
 272 settlement agreement based on its cigarette sales in this state.

273 Section 2. Subsections (6) and (7) of section 210.01,  
 274 Florida Statutes, are amended, and subsections (19) through (23)  
 275 are added to said section, to read:

276 210.01 Definitions.--When used in this part the following  
 277 words shall have the meaning herein indicated:

278 (6) "Wholesale dealer" means any person located inside or  
 279 outside this state who sells cigarettes to retail dealers or  
 280 other persons for purposes of resale only, or any person who

281 operates more than one cigarette vending machine located in more  
 282 than one place of business. Such term shall not include any  
 283 cigarette manufacturer, export warehouse proprietor, or importer  
 284 with a valid permit under 26 U.S.C. s. 5712 if such person sells  
 285 or distributes cigarettes in this state only to dealers who are  
 286 agents and who hold valid and current permits under s. 210.15 or  
 287 to any cigarette manufacturer, export warehouse proprietor, or  
 288 importer who holds a valid and current permit under 26 U.S.C. s.  
 289 5712.

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

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

297 (20) "Importer" means any person with a valid permit under  
 298 26 U.S.C. s. 5712 who imports into the United States, directly  
 299 or indirectly, a finished cigarette for sale or distribution.

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

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

306 (23) "Brand family" means all styles of cigarettes sold  
 307 under the same trademark and differentiated from one another by  
 308 means of additional modifiers or descriptors, including, but not

HB 1261

2005

309 limited to, "menthol," "lights," "kings," and "100s," and  
310 includes any brand name used alone or in conjunction with any  
311 other word, trademark, logo, symbol, motto, selling message,  
312 recognizable pattern of colors, or any other indicia of product  
313 identification identical or similar to, or identifiable with, a  
314 previously known brand of cigarettes.

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

317 210.05 Preparation and sale of stamps; discount.--

318 (6)(a) A person may not transport or cause to be  
319 transported from this state cigarettes for sale in another state  
320 without first affixing to the cigarettes the stamp required by  
321 the state in which the cigarettes are to be sold or paying any  
322 other excise tax on the cigarettes imposed by the state in which  
323 the cigarettes are to be sold.

324 (b) A person may not affix to cigarettes the stamp  
325 required by another state or pay any other excise tax on the  
326 cigarettes imposed by another state if the other state prohibits  
327 stamps from being affixed to the cigarettes, prohibits the  
328 payment of any other excise tax on the cigarettes, or prohibits  
329 the sale of the cigarettes.

330 (c) The requirements of paragraphs (a) and (b) do not  
331 apply to cigarettes with respect to which the manufacturer or  
332 importer either is a participating manufacturer (as defined in  
333 section II(jj) of the master settlement agreement) or is in full  
334 compliance with the qualifying statute (as defined in section  
335 IX(d)(2)(E) of the master settlement agreement) of the state in  
336 which the cigarettes are to be sold. An exemption pursuant to

337 this paragraph may only be asserted with respect to cigarettes  
338 that, in the case of a participating manufacturer, are deemed to  
339 be its cigarettes for purposes of calculating its payments under  
340 the master settlement agreement for the relevant year in the  
341 volumes and shares determined pursuant to the master settlement  
342 agreement and, in the case of all other manufacturers and  
343 importers, are deemed to be its cigarettes for purposes of the  
344 applicable qualifying statute. For purposes of this subsection,  
345 the term "master settlement agreement" means the settlement  
346 agreement and related documents entered into in 1998 by 46  
347 states and leading United States tobacco manufacturers. A person  
348 asserting an exemption pursuant to this paragraph shall submit  
349 the reports required by paragraph (d) and shall certify as  
350 provided in that paragraph.

351 (d) On or before the 10th day of each month, a person who  
352 transports or causes to be transported from this state  
353 cigarettes for sale in another state shall submit to the  
354 division a report identifying the quantity and brand family of  
355 each brand of the cigarettes transported or caused to be  
356 transported in the preceding calendar month and the name and  
357 address of each recipient of the cigarettes. Such person shall  
358 also certify under oath and subject to the penalties of perjury  
359 that:

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

363 2. Such person satisfies the requirements of paragraph  
364 (c).

365 (e) For purposes of this section, the term "person" means  
 366 an individual, partnership, committee, association, corporation,  
 367 or any other organization or group of persons. "Person" does not  
 368 include any common or contract carrier or public warehouse that  
 369 is not owned, in whole or in part, directly or indirectly, by  
 370 the person transporting the cigarettes or causing the transport  
 371 to be made.

372  
 373 This subsection shall not be deemed to authorize the possession  
 374 or transportation of cigarettes by any person not so authorized  
 375 by another provision of this part.

376 Section 4. Subsection (1) of section 210.06, Florida  
 377 Statutes, is amended, and subsection (5) is added to said  
 378 section, to read:

379 210.06 Affixation of stamps; presumption.--  
 380 (1) Every dealer within ~~or without~~ the state shall affix  
 381 or cause to be affixed to such package or container of such  
 382 cigarettes such stamps as are required under this section  
 383 within 10 days after receipt of such products. Dealers outside  
 384 this state shall affix such stamps before the shipment of  
 385 cigarettes into this state, ~~evidencing the payment of the tax~~  
 386 ~~imposed by virtue of this part before such cigarettes are~~  
 387 ~~offered for sale or use or consumed or before they are otherwise~~  
 388 ~~disposed of in the state.~~

389 (a) A tax stamp shall be applied to all cigarette packages  
 390 intended for sale or distribution to consumers subject to the  
 391 tax imposed under s. 210.02, except as otherwise provided in  
 392 this section.

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

396           (c) Dealers may apply stamps only to cigarette packages  
 397 received directly from a manufacturer or importer of cigarettes  
 398 who possesses a valid and current permit under 26 U.S.C. s.  
 399 5712.

400           (5) Except as provided in s. 210.09(1), no person, other  
 401 than a dealer that receives unstamped cigarette packages  
 402 directly from a cigarette manufacturer or importer in accordance  
 403 with this section and s. 210.085, shall hold or possess an  
 404 unstamped cigarette package. Dealers shall be permitted to set  
 405 aside, without application of stamps, only such part of the  
 406 dealer's stock that is identified for sale or distribution  
 407 outside this state. If a dealer maintains stocks of unstamped  
 408 cigarette packages, such unstamped packages shall be stored  
 409 separately from stamped product packages. No unstamped cigarette  
 410 packages shall be transferred by a dealer to another facility of  
 411 the dealer within this state or to another person within this  
 412 state.

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

415           210.085 Transactions only with permitted manufacturers,  
 416 importers, distributing agents, dealers, and retail dealers.--A  
 417 manufacturer, importer, or distributing agent may sell or  
 418 distribute cigarettes to a person located or doing business  
 419 within this state only if such person is a dealer with a valid,  
 420 current permit under s. 210.15. A dealer may sell or distribute

421 cigarettes to a person located or doing business within this  
 422 state only if such person is a dealer or retail dealer with a  
 423 valid, current permit under s. 569.003. A dealer may obtain  
 424 cigarettes only from a manufacturer or importer who possesses a  
 425 valid, current permit under 26 U.S.C. s. 5712 or from a  
 426 distributing agent or dealer with a valid, current permit under  
 427 s. 210.15. A retail dealer may obtain cigarettes only from a  
 428 manufacturer, importer, or dealer with a valid, current permit  
 429 under s. 210.15.

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

432 210.09 Records to be kept; reports to be made;  
 433 examination.--

434 (1)(a) Every person who shall possess or transport any  
 435 unstamped cigarettes upon the public highways, roads, or streets  
 436 of the state, shall be required to have in his or her actual  
 437 possession invoices or delivery tickets for such cigarettes. The  
 438 absence of such invoices or delivery tickets shall be prima  
 439 facie evidence that such person is a dealer in cigarettes in  
 440 this state and subject to the provisions of this part.

441 (b) Any person who ships unstamped cigarette packages into  
 442 this state other than to a manufacturer, importer, or dealer  
 443 holding a valid, current permit pursuant to s. 210.15 shall  
 444 first file with the division a notice of such shipment. This  
 445 paragraph shall not apply to any common or contract carrier that  
 446 is transporting cigarettes through this state to another  
 447 location outside this state under a proper bill of lading or  
 448 freight bill that states the quantity, source, and destination



449 of such cigarettes.

450 (c) In any case in which the division or its duly  
 451 authorized agent, or any law enforcement officer of this state,  
 452 has knowledge or reasonable grounds to believe that any vehicle  
 453 is transporting cigarettes in violation of this part, the  
 454 division, such agent, or such law enforcement officer is  
 455 authorized to stop such vehicle and inspect the vehicle for  
 456 contraband cigarettes.

457 Section 7. Subsection (1) of section 210.12, Florida  
 458 Statutes, is amended, subsections (2) through (6) of said  
 459 section are renumbered as subsections (4) through (8),  
 460 respectively, and new subsections (2) and (3) are added to said  
 461 section, to read:

462 210.12 Seizures; forfeiture proceedings.--

463 (1) The state, acting by and through the division, shall  
 464 be authorized and empowered to seize, confiscate, and forfeit  
 465 ~~for the use and benefit of the state,~~ any cigarettes upon which  
 466 taxes payable hereunder may be unpaid or that are otherwise held  
 467 in violation of the requirements of this chapter, and also any  
 468 vending machine or receptacle in which ~~such~~ cigarettes upon  
 469 which taxes have not been paid are held for sale, or any vending  
 470 machine that does not have affixed thereto the identification  
 471 sticker required by the provisions of s. 210.07, or which does  
 472 not display at all times at least one package of each brand of  
 473 cigarettes located therein so the same is clearly visible and  
 474 arranged in such a manner that the cigarette tax stamp or meter  
 475 impression of the stamp affixed thereto is clearly visible. Such  
 476 seizure may be made by the division, its duly authorized

477 representative, any sheriff or deputy sheriff, or any police  
 478 officer.

479 (2) All fixtures, equipment, and other materials and  
 480 personal property on the premises of any dealer or retail dealer  
 481 who, with intent to defraud the state, fails to keep or make any  
 482 record, return, report, or inventory required by this part;  
 483 keeps or makes any false or fraudulent record, return, report,  
 484 or inventory required by this part; refuses to pay any tax  
 485 imposed by this part; or attempts in any manner to evade or  
 486 defeat the requirements of this part shall be forfeited to the  
 487 state.

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

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

492 210.15 Permits.--

493 (1)(a) Every person, firm, or corporation desiring to  
 494 engage in business as a manufacturer, importer, exporter,  
 495 distributing agent, or wholesale dealer of cigarettes ~~deal in~~  
 496 ~~cigarettes as a distributing agent, wholesale dealer, or~~  
 497 ~~exporter~~ within this state shall file with the division an  
 498 application for a cigarette permit for each place of business  
 499 located within this state or, in the absence of such place of  
 500 business in this state, for wherever its principal place of  
 501 business is located ~~with the Division of Alcoholic Beverages and~~  
 502 ~~Tobacco~~. Every application for a cigarette permit shall be made  
 503 on forms furnished by the division and shall set forth the name  
 504 under which the applicant transacts or intends to transact

505 business, the location of the applicant's place of business  
 506 within the state, if any, and such other information as the  
 507 division may require. If the applicant has or intends to have  
 508 more than one place of business dealing in cigarettes within  
 509 this state, the application shall state the location of each  
 510 place of business. If the applicant is an association, the  
 511 application shall set forth the names and addresses of the  
 512 persons constituting the association, and if a corporation, the  
 513 names and addresses of the principal officers thereof and any  
 514 other information prescribed by the division for the purpose of  
 515 identification. The application shall be signed and verified by  
 516 oath or affirmation by the owner, if a natural person, and in  
 517 the case of an association or partnership, members or partners  
 518 thereof, and in the case of a corporation, by an executive  
 519 officer thereof or by any person specifically authorized by the  
 520 corporation to sign the application, to which shall be attached  
 521 the written evidence of this authority. The cigarette permit for  
 522 a distributing agent shall be issued annually for which an  
 523 annual fee of \$5 shall be charged.

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

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

533 corporations shall be issued only to corporations whose officers  
 534 are of good moral character and not less than 18 years of age.  
 535 There shall be no exemptions from the permit fees herein  
 536 provided to any persons, association of persons, or corporation,  
 537 any law to the contrary notwithstanding.

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

- 543 1. Owes \$500 or more in delinquent cigarette taxes;
- 544 2. Had a cigarette importer, retail dealer, or dealer  
 545 permit revoked by the division within the previous 2 years;
- 546 3. Has been convicted of selling stolen or counterfeit  
 547 cigarettes, receiving stolen cigarettes, or being involved in  
 548 the counterfeiting of cigarettes; or
- 549 4. Has to any person who has been convicted within the  
 550 past 5 years of any offense against the cigarette laws of this  
 551 state or who has been convicted in this state, any other state,  
 552 or the United States during the past 5 years of any offense  
 553 designated as a felony by such state or the United States, or to  
 554 a corporation, any of whose officers have been so convicted. The  
 555 term "convicted" "conviction" shall include an adjudication of  
 556 guilt on a plea of guilty or a plea of nolo contendere, or the  
 557 forfeiture of a bond when charged with a crime.

558 (e)-(d) The division may refuse to issue a ~~distributing~~  
 559 ~~agent, wholesale, or exporter~~ permit to any person, firm, or  
 560 corporation whose permit under the cigarette law has been

HB 1261

2005

561 | revoked or to any corporation, an officer of which has had his  
562 | or her permit under the cigarette law revoked, or to any person  
563 | who is or has been an officer of a corporation whose permit has  
564 | been revoked under the cigarette law. Any permit issued to a  
565 | firm or corporation prohibited from obtaining such permit under  
566 | the cigarette law may be revoked by the division.

567 |       (f)~~(e)~~ Prior to an application for a distributing agent,  
568 | wholesale dealer, or exporter permit being approved, the  
569 | applicant shall file a set of fingerprints on forms provided by  
570 | the division. The applicant shall also file a set of  
571 | fingerprints for any person or persons interested directly or  
572 | indirectly with the applicant in the business for which the  
573 | permit is being sought, when so required by the division. If the  
574 | applicant or any person interested with the applicant, either  
575 | directly or indirectly, in the business for which the permit is  
576 | sought shall be such a person as is within the definition of  
577 | persons to whom a ~~distributing agent, wholesale dealer, or~~  
578 | ~~exporter~~ permit shall be denied, then the application may be  
579 | denied by the division. If the applicant is a partnership, all  
580 | members of the partnership are required to file said  
581 | fingerprints, or if a corporation, all principal officers of the  
582 | corporation are required to file said fingerprints. The  
583 | cigarette permit for a wholesale dealer or exporter shall be  
584 | originally issued at a fee of \$100, which sum is to cover the  
585 | cost of the investigation required before issuing such permit.

586 |       (g)~~(f)~~ The cigarette permits issued under this section  
587 | ~~permit for a wholesale dealer or exporter~~ shall be renewed from  
588 | year to year ~~as a matter of course,~~ at an annual cost of \$100,

589 on or before July 1, upon making application to the division and  
 590 upon payment of the annual renewal fee.

591 (h)~~(g)~~ Permittees, by acceptance of their permits, agree  
 592 that their places of business or vehicles transporting  
 593 cigarettes shall always be subject to be inspected and searched  
 594 without a search warrant for the purpose of ascertaining that  
 595 all provisions of this part are complied with by authorized  
 596 employees of the division and also by sheriffs, deputy sheriffs,  
 597 and police officers during business hours or during any other  
 598 time such premises are occupied by the permittee or other  
 599 persons. Retail cigarette dealers and manufacturers'  
 600 representatives, by dealing in cigarettes, agree that their  
 601 places of business or vehicles transporting cigarettes shall  
 602 always be subject to inspection and search without a search  
 603 warrant for the purpose of ascertaining that all provisions of  
 604 this part are complied with by authorized employees of the  
 605 division and also by sheriffs, deputy sheriffs, and police  
 606 officers during business hours or other times when the premises  
 607 are occupied by the retail dealer or manufacturers'  
 608 representatives or other persons.

609 (i)~~(h)~~ No retail sales of cigarettes may be made at a  
 610 location for which a wholesale dealer, distributing agent, or  
 611 exporter permit has been issued. The excise tax on sales made to  
 612 any traveling location, such as an itinerant store or industrial  
 613 caterer, shall be paid into the General Revenue Fund  
 614 unallocated. Cigarettes may be purchased for retail purposes  
 615 only from a person holding a wholesale dealer permit. The  
 616 invoice for the purchase of cigarettes must show the place of

617 business for which the purchase is made and the cigarettes  
 618 cannot be transferred to any other place of business for the  
 619 purpose of resale.

620 Section 9. Subsections (2), (3), and (6) of section  
 621 210.18, Florida Statutes, are amended, and subsection (9) is  
 622 added to said section, to read:

623 210.18 Penalties for tax evasion; reports by sheriffs.--

624 (2) Except as otherwise provided in this section, any  
 625 person ~~wholesale or retail dealer~~ who fails, neglects, or  
 626 refuses to comply with, or violates the provisions of, this part  
 627 or the rules adopted ~~and regulations promulgated~~ by the division  
 628 under this part commits ~~is guilty of~~ a misdemeanor of the first  
 629 degree, punishable as provided in s. 775.082 or s. 775.083. Any  
 630 person ~~wholesale or retail dealer~~ who has been convicted of a  
 631 violation of any provision of the cigarette tax law and who is  
 632 thereafter convicted of a further violation of the cigarette tax  
 633 law is, upon conviction of such further offense, guilty of a  
 634 felony of the third degree, punishable as provided in s.  
 635 775.082, s. 775.083, or s. 775.084.

636 (3) Any person who falsely or fraudulently makes, forges,  
 637 alters, or counterfeits any stamp or impression die used in  
 638 meter machines prescribed by the division under the provisions  
 639 of this part; or, with intent to evade taxes, jams, tampers  
 640 with, or alters such a machine; or causes or procures to be  
 641 falsely or fraudulently made, forged, altered, or counterfeited  
 642 any such stamp or die; or knowingly and willfully utters,  
 643 purchases, passes, or tenders as true any such false, altered,  
 644 or counterfeited stamp or die impression; or, with the intent to

645 defraud the state, fails to comply with any other requirement of  
 646 this chapter commits ~~is guilty of~~ a felony of the third degree,  
 647 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

648 ~~(6)(a) Every person, firm, or corporation, other than a~~  
 649 ~~licensee under the provisions of this part, who possesses,~~  
 650 ~~removes, deposits, or conceals, or aids in the possessing,~~  
 651 ~~removing, depositing, or concealing of, any unstamped cigarettes~~  
 652 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~  
 653 ~~second degree, punishable as provided in s. 775.082 or s.~~  
 654 ~~775.083. In lieu of the penalties provided in those sections,~~  
 655 ~~however, the person, firm, or corporation may pay the tax plus a~~  
 656 ~~penalty equal to the amount of the tax authorized under s.~~  
 657 ~~210.02 on the unstamped cigarettes.~~

658 ~~(a)(b)~~ (a) Every person, firm, or corporation, other than a  
 659 licensee under the provisions of this part, who possesses,  
 660 removes, deposits, or conceals, or aids in the possessing,  
 661 removing, depositing, or concealing of, any unstamped cigarettes  
 662 in excess of 50 cartons is presumed to have knowledge that they  
 663 have not been taxed and commits ~~is guilty of~~ a felony of the  
 664 third degree, punishable as provided in s. 775.082, s. 775.083,  
 665 or s. 775.084.

666 ~~(b)(e)~~ (b) This section does not apply to a person possessing  
 667 not in excess of three cartons of such cigarettes purchased by  
 668 such possessor outside the state in accordance with the laws of  
 669 the place where purchased and brought into this state by such  
 670 possessor. The burden of proof that such cigarettes were  
 671 purchased outside the state and in accordance with the laws of  
 672 the place where purchased shall in all cases be upon the



673 | possessor of such cigarettes.

674 |       (9) Notwithstanding any other provision of law, the sale  
 675 | or possession for sale of counterfeit cigarettes by any person  
 676 | or by a manufacturer, importer, distributing agent, wholesale  
 677 | dealer, or retail dealer shall result in the seizure of the  
 678 | product and related machinery by the division or any law  
 679 | enforcement agency and shall be punishable as follows:

680 |       (a)1. A first violation with a total quantity of less than  
 681 | two cartons of cigarettes or the equivalent amount of other  
 682 | cigarettes shall be punishable by a fine not to exceed \$1,000 or  
 683 | five times the retail value of the cigarettes involved,  
 684 | whichever is greater, or imprisonment not to exceed 5 years, or  
 685 | both.

686 |       2. A subsequent violation with a total quantity of less  
 687 | than two cartons of cigarettes or the equivalent amount of other  
 688 | cigarettes shall be punishable by a fine not to exceed \$5,000 or  
 689 | five times the retail value of the cigarettes involved,  
 690 | whichever is greater, or imprisonment not to exceed 5 years, or  
 691 | both, and shall also result in the revocation by the division of  
 692 | the permit of the manufacturer, importer, distributing agent,  
 693 | wholesale dealer, or retail dealer.

694 |       (b)1. A first violation with a total quantity of two or  
 695 | more cartons of cigarettes or the equivalent amount of other  
 696 | cigarettes shall be punishable by a fine not to exceed \$2,000 or  
 697 | five times the retail value of the cigarettes involved,  
 698 | whichever is greater, or imprisonment not to exceed 5 years, or  
 699 | both.

700 |       2. A subsequent violation with a quantity of two cartons

701 of cigarettes or more or the equivalent amount of other  
 702 cigarettes shall be punishable by a fine not to exceed \$50,000  
 703 or five times the retail value of the cigarettes involved,  
 704 whichever is greater, or imprisonment not to exceed 5 years, or  
 705 both, and shall also result in the revocation by the division of  
 706 the permit of the manufacturer, importer, distributing agent,  
 707 wholesale dealer, or retail dealer.

708  
 709 For purposes of this subsection, any counterfeit cigarettes  
 710 seized by the division shall be destroyed.

711 Section 10. Section 210.181, Florida Statutes, is created  
 712 to read:

713 210.181 Civil penalties.--

714 (1) Whoever knowingly omits, neglects, or refuses to  
 715 comply with any duty imposed upon him or her by this part, or to  
 716 do or cause to be done any of the things required by this part,  
 717 or does anything prohibited by this part shall, in addition to  
 718 any other penalty provided in this part, be liable for a fine of  
 719 \$1,000 or five times the retail value of the cigarettes  
 720 involved, whichever is greater.

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

725 Section 11. For the purpose of incorporating the amendment  
 726 made by this act to section 210.18, Florida Statutes, in a  
 727 reference thereto, paragraph (a) of subsection (1) of section  
 728 772.102, Florida Statutes, is reenacted to read:

729           772.102 Definitions.--As used in this chapter, the term:  
 730           (1) "Criminal activity" means to commit, to attempt to  
 731 commit, to conspire to commit, or to solicit, coerce, or  
 732 intimidate another person to commit:  
 733           (a) Any crime which is chargeable by indictment or  
 734 information under the following provisions:  
 735           1. Section 210.18, relating to evasion of payment of  
 736 cigarette taxes.  
 737           2. Section 414.39, relating to public assistance fraud.  
 738           3. Section 440.105 or s. 440.106, relating to workers'  
 739 compensation.  
 740           4. Part IV of chapter 501, relating to telemarketing.  
 741           5. Chapter 517, relating to securities transactions.  
 742           6. Section 550.235, s. 550.3551, or s. 550.3605, relating  
 743 to dogracing and horseracing.  
 744           7. Chapter 550, relating to jai alai frontons.  
 745           8. Chapter 552, relating to the manufacture, distribution,  
 746 and use of explosives.  
 747           9. Chapter 562, relating to beverage law enforcement.  
 748           10. Section 624.401, relating to transacting insurance  
 749 without a certificate of authority, s. 624.437(4)(c)1., relating  
 750 to operating an unauthorized multiple-employer welfare  
 751 arrangement, or s. 626.902(1)(b), relating to representing or  
 752 aiding an unauthorized insurer.  
 753           11. Chapter 687, relating to interest and usurious  
 754 practices.  
 755           12. Section 721.08, s. 721.09, or s. 721.13, relating to  
 756 real estate timeshare plans.

- 757 | 13. Chapter 782, relating to homicide.
- 758 | 14. Chapter 784, relating to assault and battery.
- 759 | 15. Chapter 787, relating to kidnapping.
- 760 | 16. Chapter 790, relating to weapons and firearms.
- 761 | 17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
- 762 | relating to prostitution.
- 763 | 18. Chapter 806, relating to arson.
- 764 | 19. Section 810.02(2)(c), relating to specified burglary
- 765 | of a dwelling or structure.
- 766 | 20. Chapter 812, relating to theft, robbery, and related
- 767 | crimes.
- 768 | 21. Chapter 815, relating to computer-related crimes.
- 769 | 22. Chapter 817, relating to fraudulent practices, false
- 770 | pretenses, fraud generally, and credit card crimes.
- 771 | 23. Section 827.071, relating to commercial sexual
- 772 | exploitation of children.
- 773 | 24. Chapter 831, relating to forgery and counterfeiting.
- 774 | 25. Chapter 832, relating to issuance of worthless checks
- 775 | and drafts.
- 776 | 26. Section 836.05, relating to extortion.
- 777 | 27. Chapter 837, relating to perjury.
- 778 | 28. Chapter 838, relating to bribery and misuse of public
- 779 | office.
- 780 | 29. Chapter 843, relating to obstruction of justice.
- 781 | 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 782 | s. 847.07, relating to obscene literature and profanity.
- 783 | 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 784 | 849.25, relating to gambling.

785           32. Chapter 893, relating to drug abuse prevention and  
786 control.

787           33. Section 914.22 or s. 914.23, relating to witnesses,  
788 victims, or informants.

789           34. Section 918.12 or s. 918.13, relating to tampering  
790 with jurors and evidence.

791           Section 12. For the purpose of incorporating the amendment  
792 made by this act to section 210.18, Florida Statutes, in a  
793 reference thereto, paragraph (a) of subsection (1) of section  
794 895.02, Florida Statutes, is reenacted to read:

795           895.02 Definitions.--As used in ss. 895.01-895.08, the  
796 term:

797           (1) "Racketeering activity" means to commit, to attempt to  
798 commit, to conspire to commit, or to solicit, coerce, or  
799 intimidate another person to commit:

800           (a) Any crime which is chargeable by indictment or  
801 information under the following provisions of the Florida  
802 Statutes:

803           1. Section 210.18, relating to evasion of payment of  
804 cigarette taxes.

805           2. Section 403.727(3)(b), relating to environmental  
806 control.

807           3. Section 409.920 or s. 409.9201, relating to Medicaid  
808 fraud.

809           4. Section 414.39, relating to public assistance fraud.

810           5. Section 440.105 or s. 440.106, relating to workers'  
811 compensation.

812           6. Section 465.0161, relating to distribution of medicinal  
813 drugs without a permit as an Internet pharmacy.

814           7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and  
815 499.0691, relating to crimes involving contraband and  
816 adulterated drugs.

817           8. Part IV of chapter 501, relating to telemarketing.

818           9. Chapter 517, relating to sale of securities and  
819 investor protection.

820           10. Section 550.235, s. 550.3551, or s. 550.3605, relating  
821 to dogracing and horseracing.

822           11. Chapter 550, relating to jai alai frontons.

823           12. Chapter 552, relating to the manufacture,  
824 distribution, and use of explosives.

825           13. Chapter 560, relating to money transmitters, if the  
826 violation is punishable as a felony.

827           14. Chapter 562, relating to beverage law enforcement.

828           15. Section 624.401, relating to transacting insurance  
829 without a certificate of authority, s. 624.437(4)(c)1., relating  
830 to operating an unauthorized multiple-employer welfare  
831 arrangement, or s. 626.902(1)(b), relating to representing or  
832 aiding an unauthorized insurer.

833           16. Section 655.50, relating to reports of currency  
834 transactions, when such violation is punishable as a felony.

835           17. Chapter 687, relating to interest and usurious  
836 practices.

837           18. Section 721.08, s. 721.09, or s. 721.13, relating to  
838 real estate timeshare plans.

839           19. Chapter 782, relating to homicide.

- 840           20. Chapter 784, relating to assault and battery.
- 841           21. Chapter 787, relating to kidnapping.
- 842           22. Chapter 790, relating to weapons and firearms.
- 843           23. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
- 844 796.05, or s. 796.07, relating to prostitution and sex
- 845 trafficking.
- 846           24. Chapter 806, relating to arson.
- 847           25. Section 810.02(2)(c), relating to specified burglary
- 848 of a dwelling or structure.
- 849           26. Chapter 812, relating to theft, robbery, and related
- 850 crimes.
- 851           27. Chapter 815, relating to computer-related crimes.
- 852           28. Chapter 817, relating to fraudulent practices, false
- 853 pretenses, fraud generally, and credit card crimes.
- 854           29. Chapter 825, relating to abuse, neglect, or
- 855 exploitation of an elderly person or disabled adult.
- 856           30. Section 827.071, relating to commercial sexual
- 857 exploitation of children.
- 858           31. Chapter 831, relating to forgery and counterfeiting.
- 859           32. Chapter 832, relating to issuance of worthless checks
- 860 and drafts.
- 861           33. Section 836.05, relating to extortion.
- 862           34. Chapter 837, relating to perjury.
- 863           35. Chapter 838, relating to bribery and misuse of public
- 864 office.
- 865           36. Chapter 843, relating to obstruction of justice.
- 866           37. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 867 s. 847.07, relating to obscene literature and profanity.

868           38. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.  
869 849.25, relating to gambling.

870           39. Chapter 874, relating to criminal street gangs.

871           40. Chapter 893, relating to drug abuse prevention and  
872 control.

873           41. Chapter 896, relating to offenses related to financial  
874 transactions.

875           42. Sections 914.22 and 914.23, relating to tampering with  
876 a witness, victim, or informant, and retaliation against a  
877 witness, victim, or informant.

878           43. Sections 918.12 and 918.13, relating to tampering with  
879 jurors and evidence.

880           Section 13. For the 2005-2006 fiscal year, the sum of  
881 \$480,028 is appropriated from the Alcoholic Beverage and Tobacco  
882 Trust Fund and four full-time equivalent positions are  
883 authorized to be established by the Department of Business and  
884 Professional Regulation for the purpose of conducting regulatory  
885 activities related to the transportation and sale of cigarettes.

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

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

891           17.41 Department of Financial Services Tobacco Settlement  
892 Clearing Trust Fund.--

893           (2) Funds to be credited to the Tobacco Settlement  
894 Clearing Trust Fund shall consist of payments received by the  
895 state from settlement of State of Florida v. American Tobacco



HB 1261

2005

896 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996) and fees from the  
897 nonsettling manufacturer fee collected pursuant to s. 210.0205.  
898 Moneys received from the settlement and fees and deposited into  
899 the trust fund are exempt from the service charges imposed under  
900 s. 215.20.

901 Section 16. This act shall take effect on July 1, 2005.