



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes**--The bill requires a permit for manufacturers and importers selling cigarettes in Florida and establishes an annual fee of \$100 for the permit.

The new regulatory, audit, and penalty provisions created in this legislation may help curtail the unlawful trafficking in counterfeit and contraband cigarettes and thereby result in the collection of additional taxes due to the state and federal government.

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

The Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation [DBPR] oversees the regulation of cigarettes and other tobacco products and the collection of excise taxes on those products. Specifically, Part I of chapter 210, Florida Statutes, concerns the taxation and regulation of cigarettes. Part II of chapter 210, Florida Statutes, concerns the taxation and regulation of other tobacco products, e.g., chew, snuff, etc., and chapter 569 concerns the retail sale of all types of tobacco. Section 210.15, F.S., requires every person, firm or corporation desiring to deal in cigarettes in Florida as a distributing agent, wholesale dealer, or exporter to apply for a cigarette permit. Similarly s. 569.003, F.S., requires every person, firm or corporation desiring to sell cigarettes or other tobacco products at retail to obtain a retail tobacco products dealer permit.

A "distributing agent" is one who receives cigarettes in interstate or intrastate commerce and distributes them to wholesalers or to other distributing agents inside or outside of the state. A "wholesale dealer" sells cigarettes to retail dealers or to other wholesalers. A wholesale dealer may be either a "stamping agent," meaning they actually place the tax stamp on packages of cigarettes, or non-stamping "tax-paid" wholesaler who receives cigarettes from wholesalers with the tax stamps already affixed. A person who operates cigarette vending machines in more than one place of business is considered a wholesale dealer while a person who operates cigarette vending machines in their own business is considered to be a retail dealer. An "exporter" is a person who transports tax-exempt cigarettes into Florida under bond for delivery into foreign commerce.<sup>1</sup> There is no definition for "importer" or "manufacturer" in Part I of chapter 210.

Section 210.06, F.S., requires that the appropriate Florida excise tax stamp be applied before cigarettes can be offered for sale in this state. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers [located within and outside of this state] and are affixed to packages as proof of payment.<sup>2</sup> Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid upon the first sale or transaction within this state whether or not such sale or transfer is to the ultimate purchaser or consumer. Current law is unclear whether cigarette manufacturers are considered wholesale dealers for purposes of paying the excise tax. For FY 2003-04, the Division collected over \$417 million in state excise tax revenue. In addition to excise tax revenue, cigarette sales are subject to the state sales tax which generates approximately two-thirds of excise tax collections in additional tax revenue. Cigarettes that are not properly stamped may not legally be sold in Florida.

---

<sup>1</sup> Title 26, s. 5702 U.S.C. defines an export warehouse as "...a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States."

<sup>2</sup> The excise tax on a standard pack of 20 cigarettes is 33.9 cents.

Wholesale dealers are required to submit to the Division by the 10th day of each month a monthly report of its purchases and sales of cigarettes within or without the state for the preceding month. Out-of-state cigarette sales are reported on a wholesale dealer's monthly report as exempt from the excise tax because the tax applies only to sales in Florida.

### Bond Requirements

The Division may appoint wholesale dealers and cigarette manufacturers as agents to buy or affix cigarette stamps. These agents are required to obtain a surety bond to cover their tax liability, but according to the Division the statutorily set bond does not cover the cost of a typical purchase of tax stamps. Section 210.08, F.S., authorizes the Division to accept a bond that is not less than \$1,000, and prohibits the Division from requiring a bond greater than \$10,000. According to the Division, individual tax stamp purchases in excess of \$10,000 are common, and the typical roll of stamps costs more than \$10,000.

The \$10,000 bond limit and \$1,000 bond minimum have been in effect since 1945, when the excise tax on cigarettes was two cents; the current excise tax is 33.9 cents per 20-cigarette pack. This surety limitation applies to cash payments, which includes payments made by check or bank draft.

Further, stamping agents may purchase cigarette tax stamps by check or credit. If a payment is made by check, and there are insufficient funds to cover the amount of the check, the bad check may not be identified for several weeks or months. During this time the agent could amass a high bill for unpaid taxes and the taxes may not be collected before the agent goes out of business.

Section 210.05(3)(b), F.S., sets the amount for a surety bond, certificate of deposit, unconditional guarantee contract, or irrevocable letter of credit that must be filed with the Division for payment of tax obligations from credit purchases at 110 percent of the estimated tax liability for 30 days, but not less than \$2,000. Default on the bond or payments can result in the revocation of the privilege to purchase stamps on credit for a period of up to 12 months at the discretion of the Division.

Section 210.021, F.S., permits the Division to require wholesale dealers to pay their required tax by electronic funds transfer (EFT) if the dealer has paid \$50,000 or more in taxes during the previous year. According to the Division, requiring all dealers to pay by EFT may result in a more efficient collection of tax revenue since payments made with insufficient funds are less common when made by EFT than with check payments. In the addition, the Division believes that requiring all new dealers to pay by cashiers check for the first year of operation would establish the dealer as a permanent business with a reduced risk of lost tax revenue.

### Federal Regulation

The Bureau of Alcohol, Tobacco and Firearms [ATF] in the U. S. Department of the Treasury enforces Chapter 52 of Title 26 of the United States Code and Chapter 114 of Title 18 of the United States Code. Chapter 52 of Title 26, U.S.C., deals mainly with the permits required for the manufacture, importation and other operations involving tobacco products, including federal excise taxes. Chapter 114 of Title 18, U.S.C., deals with trafficking in contraband cigarettes.

### Counterfeit, Contraband and Gray Market Cigarettes

A December 2002 Morgan Stanley report estimates that counterfeit cigarettes account for an approximate 2% and growing market share volume in the United States.<sup>3</sup> According to an ATF spokesman, as quoted in a 2003 Government Accounting report, illegal cigarettes were the number one seized product in the United States in 2002 with theft, hijackings and counterfeiting of cigarettes

---

<sup>3</sup> *State of the US Cigarette Industry: Not a Pretty Picture*, MorganStanley, Tobacco – December 13, 2002

and tax stamps on the rise.<sup>4</sup> In the book *Lightning Out of Lebanon: Hezbollah Terrorists on American Soil* the authors warn of the presence of terrorist organizations in the United States and chronicled a 2002 case involving the illegal trafficking of cigarettes in which the profits were funneled to a group on the State Department's list of terrorist organizations.<sup>5</sup> A January 7, 2005 News Release from U. S. Immigration and Customs Enforcement cited an investigation of another international cigarette smuggling network that distributed 2,313 cases of counterfeit cigarettes with a retail value of approximately \$5.4 million. According to the News Release, the organization was receiving counterfeit and contraband cigarettes from Florida and Texas companies as well as manufacturers in Taiwan and China. The loss of revenue to the federal government and state governments of New York, California and Texas from that one organization was approximately \$9.2 million.<sup>6</sup>

According to an industry publication, Internet and mail-order sales of consumer goods, including tobacco products, are the fastest-growing businesses in the United States.<sup>7</sup> The Internet is one of the sales outlets of choice for counterfeit volume, stolen cargo and stolen retail volume, as well as gray market products. The federal Jenkins Act<sup>8</sup> requires any person who sells and ships tobacco products into a state to a consumer, other than a licensed distributor, to report the sale to the buyer's regulatory agency; however, according to many industry reports, this statute is not aggressively enforced. The Division reports that it has received reports under the federal Jenkins Act from only a few out of state suppliers and lacks jurisdiction to require compliance.

The scope of counterfeit or untaxed cigarette sales in Florida is largely unknown. Section 210.18(7), Florida Statutes, requires local law enforcement agencies to report seizures of unstamped cigarettes to the Division but does not require the Division to maintain a database of that information. The statute does not require a similar reporting by state law enforcement agencies of seized product.

## SUMMARY OF PROPOSED LEGISLATION

This bill makes numerous changes to Part I of chapter 210, Florida Statutes, pertaining to cigarette permitting, stamping, and reporting requirements. The primary changes involve the institution of a three-tiered distribution system, additional reporting requirements and increased penalty provisions.

The three-tiered distribution system provides that a manufacturer, importer, or a distributing agent acting on behalf of a manufacturer or importer, may sell and distribute cigarettes only to wholesale dealers and wholesale dealers may only sell and distribute cigarettes to retail dealers or other wholesale dealers. Retailers may only purchase cigarettes from wholesale dealers. The bill does not prohibit dual licensure among the classes of cigarette permits.

This structured distribution system with its accompanying reporting requirements and penalty provisions is intended to assist the Division in tracking the movement of cigarettes in the state, ensuring that applicable taxes are collected, and preventing the sale of counterfeit or contraband products.

### New or Clarified Definitions

The bill creates definitions for the previously undefined classes of "importer" and "manufacturer."

---

<sup>4</sup> *Terrorist Financing: U.S. Agencies Should Systematically Access Terrorists' Use of Alternative Financing Mechanisms*, GAO Report 04-163, November 2003.

<sup>5</sup> GAO Report 04-163 discusses this event.

<sup>6</sup> *El Paso Man Sentenced in Cigarette Smuggling Case*, U. S. Immigration and Customs Enforcement, U. S. Department of Homeland Security, January 7, 2005 found @ <http://www.ice.gov/graphics/news/newsreleases/articles/elpaso010705.htm> [last visited February 15, 2005].

<sup>7</sup> *Rise of the Rebels*, Tobacco Reporter, September 2003

<sup>8</sup> Jenkins Act, 15 U.S.C., s. 375-378, provides that any person who advertises cigarettes for sale or who ships cigarettes into a state to any person other than a licensed cigarette distributor must file a statement with the appropriate state agency that lists the seller's name, trade name, and address of all business locations as well as the name and address of the person to whom the shipments were made, the brand and quantity of cigarettes shipped. A violation of the Act is a federal misdemeanor.

“Importers” are defined as one who, directly or indirectly, imports finished cigarettes into the United States<sup>9</sup> and are required to hold a valid federal permit [26 U.S.C. s. 5712]. A “manufacturer” is defined as a person who manufactures, fabricates, assembles, processes, or labels a finished cigarette and is also required to hold a valid federal permit [26 U.S.C. s. 5712]. The term applies to domestic but not foreign manufacturers.

This legislation expands the definition of “wholesale dealer” to clarify that the term includes persons located outside of the state who sell cigarettes to retail dealers or other persons for purposes of resale in Florida. The expanded definition excludes manufacturers, export warehouse proprietors or importers who are properly licensed under federal law if that manufacturer, export warehouse proprietor or importer sells or distributes cigarettes in Florida only to stamping agent wholesalers or to export warehouse proprietors or other manufacturers. This definition attempts to clarify that those entities are not responsible for affixing tax stamps to cigarette packages. The amended definition also excludes vending machine operators from the definition of wholesale dealer.

A “retail dealer” is defined as a person, other than a wholesale dealer, located inside or outside this state that sells cigarettes, and the definition captures retail dealers licensed pursuant to s. 569.003, Florida Statutes. Vending machine operators will be considered retail dealers.

### **New Regulatory Provisions**

A newly created s. 210.085, Florida Statutes, establishes a chain of distribution for cigarettes in Florida: manufacturers or importers sell to wholesale dealers or importers who sell to retailers or to non-stamping wholesale dealers. An importer may purchase cigarettes only from a manufacturer; a wholesale dealer may purchase cigarettes only from a manufacturer or importer; or a non-stamping wholesaler may purchase stamped cigarettes from a stamping agent wholesaler; a retail dealer may only purchase cigarettes from a wholesale dealer. Cigarette distributing agents hold or transport cigarettes on behalf of manufacturers or importers but do not own or sell the product.

Section 210.09, Florida Statutes, requires anyone possessing or transporting unstamped cigarettes in Florida to have invoices or delivery tickets for the unstamped cigarettes in his or her actual possession. This section is further amended by this legislation to require any person who ships unstamped cigarettes into Florida to anyone other than a wholesale dealer to notify the Division prior to shipment. This new provision does not apply to common or contract carriers operating with a proper bill of lading or freight bill that states the quantity, source, and destination of the cigarettes, or to common or contract carriers that do not issue paper bills of lading but instead uses electronic shipping documents as part of its ordinary course of business. The Division or any law enforcement officer is authorized to stop and inspect these vehicles for contraband cigarettes upon establishment of probable cause.

Distributing agents, wholesalers, retailers, common carriers and any other person handling, transporting or possessing cigarettes for sale or distribution in the state are required to maintain records of cigarettes received, sold or delivered within Florida and make reports to the Division by the 10<sup>th</sup> day of the month. Records must be maintained for a period of three years and must be available for inspection and audit by the Division. This bill adds manufacturers and importers to the list of entities required to comply with these record-keeping and reporting requirements.

Section 210.06(1), Florida Statutes, requires wholesalers located inside or outside of Florida to apply the cigarette excise tax stamp before cigarettes are offered for sale in Florida. This bill requires wholesalers in Florida to apply the tax stamp within 10 days of receipt of the cigarettes and requires wholesalers outside of Florida to apply the stamps before shipping cigarettes into Florida. This

---

<sup>9</sup> 26 U.S.C. s. 5702 defines an importer as “...any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes manufactured in a foreign county, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully bring tobacco products or cigarette papers or tubes into the United States.”

subsection excludes cigarettes with a federal exemption,<sup>10</sup> or an exemption under Part I of ch. 210, from the stamping requirement. To further the new distribution structure, this subsection provides that wholesale dealers may only stamp cigarettes received from manufacturers or importers with valid federal permits.

A new subsection (5) is added to s. 210.06, Florida Statutes, to specify that only wholesale dealers receiving unstamped cigarettes directly from a manufacturer or importer may hold or possess unstamped cigarettes. Unstamped inventory is required to be kept separate from stamped inventory and unstamped cigarettes may not be transferred between wholesalers or between facilities of the same wholesaler.

The Division reports that there are approximately 400 wholesale dealers reporting purchases from 78 known manufacturers and importers that are primarily located outside of the state; however, the exact number of entities selling or shipping cigarettes into Florida is unknown.

### Bond and Payment Requirements

The bill amends s. 210.021, Florida Statutes, to allow the Secretary of the DBPR to require a dealer to remit cigarette taxes by certified check or ETF, and to require that during the initial period of licensure or appointment, not to exceed 12 months, taxes must be paid by certified check or by ETF. The bill also authorizes the Division to adopt rules to administer this provision.

The bill also amends s. 210.08, Florida Statutes, to set the amount for the required surety bond, certificate of deposit, or irrevocable letter of credit that that must be filed with the Division for payment of taxes at 110 percent of the estimated tax liability for 30 days, but not less than \$2,000, rather than the current \$10,000 bond.

These provisions are intended to increase the bond amount sufficiently to cover the actual amount of tax stamps purchased and reduce the risk of tax stamps being purchased with checks subsequently returned for insufficient funds.

### Permit Renewals

Under existing law the permit fee for distributing agents is set at \$5 at initial issuance and the permit is renewed "as a matter of course" upon payment of a \$5 renewal fee. Similarly, under existing law the permit fee for wholesale dealers and exporters is set at \$100 and are renewed "as a matter of course" upon payment of a \$100 renewal fee. This legislation amends s. 210.15, Florida Statutes, to establish a \$100 fee for initial issuance and renewals of all cigarette permits and provides that permits for renewal are not renewed "as a matter of course" but must be subjected to the original standards for issuance. In addition a permit may not be issued, maintained, or renewed if the applicant, its officers, or any person owning more than 10 percent interest:

- Has been finally adjudicated as owing \$500 or more in delinquent cigarette taxes;
- Had any cigarette permit revoked by the Division within the previous two years;
- Has been convicted of receiving or selling stolen or counterfeit cigarettes or been involved in counterfeiting;
- Has imported cigarettes in violation of federal law; or
- Has imported or manufactured for sale or distribution any cigarettes that do not comply with federal labeling and advertising requirements.

A permit must be issued for each place of business in the state, or if there is no Florida business location, a permit must be issued for the entity's principal place of business.

---

<sup>10</sup> 26 U.S.C. s. 5704 provides exemptions from tax for tobacco products furnished for employee use or experimental purposes; for tobacco products transferred or removed in bond from domestic factories and export warehouses and those released in bond from customs custody; and for tobacco products exported and returned.

As amended by this bill, s. 210.16, Florida Statutes, requires the Division to revoke the permit of any person who would be ineligible to obtain a new permit under revised s. 210.15, Florida Statutes, or for violations of Part I, Ch. 210 or Chapter 569 and extends the time restriction on renewal from six months to two years.

### **Enforcement and Penalty Provisions**

Increased enforcement and administrative, civil, and criminal penalties are provided in this legislation to deal with counterfeit and contraband products and any other violation of the act.

#### Additional Seizure and Forfeiture Authority

Section 210.09, Florida Statutes, requires any person possessing or transporting unstamped cigarettes in Florida to have invoices or delivery tickets for the unstamped cigarettes in his or her actual possession. That statute is amended to require anyone shipping cigarettes into the state to anyone other than a licensed manufacturer, importer, distributing agent or wholesale dealer to file a notice of the shipment with the Division. Common or contract carriers are exempt from this reporting requirement.

The bill also permits the Division or its authorized agent, or a law enforcement officer, to stop a vehicle and inspect the vehicle for contraband cigarettes, if the official has probable cause to believe that a vehicle is transporting cigarettes in violation of the state's cigarette tax law.

Under current law, the Division is authorized to seize, confiscate, and forfeit for the use and benefit of the state, any cigarettes for which the state's cigarette excise taxes are unpaid (s. 210.12(1), F.S.). The bill extends the Division's authority to seize, confiscate, and forfeit cigarettes to any cigarettes that are held in violation of the state's cigarette tax law. The bill requires that all fixtures, equipment, and other materials and personal property on the premises of a wholesale dealer or retail dealer be forfeited to the state, if the wholesale dealer or retail dealer, with intent to defraud the state:

- Fails to keep or make a required record, return, report, or inventory;
- Keeps or makes a false or fraudulent record, return, report, or inventory;
- Refuses to pay any tax imposed by this part; or
- Attempts to evade or defeat the requirements of the state's cigarette tax law.

The bill prohibits the state from using or benefiting from the seizure, confiscation, and forfeiture of cigarettes and requires the state to destroy these cigarettes.

Section 210.18, Florida Statutes, is amended to require state law enforcement officers, in addition to the sheriffs, deputy sheriffs, and police officers, to report the seizure of unstamped cigarettes to the Division. Further, the bill requires that the Division maintains records of the number of seizures and the number of seized cigarettes.

#### Additional Criminal Penalties for Tax Evasion

Under current law, a wholesale dealer or retail dealer who violates the cigarette tax law commits a misdemeanor of the first degree, punishable by up to 1 year in prison or up to a \$1,000 fine (s. 210.18(2), F.S.). A subsequent conviction is a felony of the third degree, punishable by up to 5 years in prison or up to a \$5,000 fine, and is subject to the habitual felony offender statute. The bill extends these criminal penalties to all persons. Amended subsection (3) specifies that a person who fails to comply with any requirement of the cigarette tax law, with the intent to defraud the state, commits a felony of the third degree, punishable by up to 5 years in prison or up to a \$5,000 fine, and is subject to the habitual felony offender statute.

#### Additional Criminal Penalties for the Sale or Possession of Counterfeit Cigarettes

A new subsection (10) in s. 210.18, Florida Statutes, provides that, notwithstanding any other law, a person that does not hold a permit or a retail dealer who sells or possesses counterfeit cigarettes is subject to the following criminal penalties:

- For a first violation involving less than two cartons of cigarettes by an unlicensed individual or by a licensed retail dealer up to a \$1,000 fine or five times the retail value of the cigarettes, whichever is greater;
- For a subsequent violation by an unlicensed individual or a licensed retail dealer involving less than two cartons of cigarettes, up to a \$5,000 fine or five times the retail value of the cigarettes, whichever is greater, and the revocation of the permit by the Division;
- For a first violation by an unlicensed individual or a licensed retail dealer involving two or more cartons of cigarettes, up to a \$2,000 fine or five times the retail value of the cigarettes, whichever is greater; and
- For a subsequent violation by an unlicensed individual or a licensed retail dealer involving two or more cartons of cigarettes, punishable by a \$50,000 fine or five times the retail value of the cigarettes, whichever is greater, and the revocation by the Division of the permit.

Similarly, a person that holds a permit, other than a retail permit, e.g. a manufacturer, importer, distributing agent, or wholesale dealer, that sells or possesses counterfeit cigarettes commits a third degree felony and is subject to the following penalties:

- For a first violation involving less than ten cartons of cigarettes up to a \$1,000 fine or five times the retail value of the cigarettes, whichever is greater.
- For a subsequent violation involving less than ten cartons of cigarettes up to a \$5,000 fine or five times the retail value of the cigarettes, whichever is greater, and the revocation of the permit by the Division;
- For a first violation involving ten cartons of cigarettes or more up to a \$2,000 fine or five times the retail value of the cigarettes, whichever is greater; and
- For a subsequent violation involving ten or more cartons of cigarettes, up to a \$50,000 fine or five times the retail value of the cigarettes, whichever is greater, and the revocation by the Division of the permit.

This provision requires the Division, or other law enforcement agency, to seize counterfeit cigarettes and related machinery and also requires the Division to destroy the seized counterfeit cigarettes.

#### Additional Civil Penalties

Presently s. 210.16(5), Florida Statutes, specifies that a \$1,000 civil penalty may be imposed in lieu of the suspension or revocation of a permit for a violation of Part I, Chapter 210. This bill increases the allowable penalty from \$1,000 to \$2,500 and provides that the penalty is in addition to the suspension or revocation of the permit.

A new s. 210.181, Florida Statutes, is created to impose civil penalties, in addition to other penalties provided in the cigarette tax law, against a person who knowingly omits, neglects, or refuses to comply with any duty imposed by the cigarette tax law, or to do or cause to be done anything required by the cigarette tax law, or does anything prohibited by the cigarette tax law and specifies that the person violating these provisions is liable for a \$1,000 fine or five times the retail value of the cigarettes, whichever is greater. Subparagraph (10) also sets civil penalties which range from \$1,000 or five times the retail value of the counterfeit cigarettes for a first possession with intent to sell of two cartons or less to \$50,000 for subsequent convictions of ten cartons or more.

#### C. SECTION DIRECTORY:



Section 1. Creates and amends several definitions in s. 210.01, Florida Statutes.

Section 2. Amends s. 210.021, Florida Statutes, requiring the payment of taxes by certified check or electronic funds transfer; allows for the adoption of rules.

Section 3. Amends subsection (1) of s. 210.06, Florida Statutes, relating to the affixation of tax stamps and creates a new subsection (5) in section 210.06, Florida Statutes, relating to the possession of unstamped cigarettes.

Section 4. Amends s. 210.08, Florida Statutes, to set the amount for the surety bond, certificate of deposit, or irrevocable letter of credit that must be filed with the Division at 110 percent of the estimated tax liability, but not less than \$2,000.

Section 5. Creates a new s. 210.085, Florida Statutes, establishing a chain of distribution for cigarettes.

Section 6. Amends subsections (1) - (3) and paragraph (a) of subsection (4) of s. 210.09, Florida Statutes, relating to shipments of unstamped cigarettes and the maintenance of records.

Section 7. Amends subsection (1) of s. 210.12, Florida Statutes, and creates new subsections (2) and (3) relating to seizures and forfeitures.

Section 8. Amends subsection (1) of s. 210.15, Florida Statutes, relating to issuance and renewal of permits, permit fees, and disqualifying offenses.

Section 9. Amends s. 210.16, Florida Statutes, relating to revocation or suspension of permits and the imposition of civil penalties.

Section 10. Amends subsections (2), (3) and (7) of s. 210.18, Florida Statutes, and creates new subsections (9) and (10) which relate to penalties for tax evasion including seizure, forfeiture and destruction of product, as well as possession with the intent to sell and the imposition of civil and criminal penalties.

Section 11. Creates a new s. 210.181, Florida Statutes, relating to the imposition of civil penalties.

Section 12. Reenacts paragraph (a) of subsection (1) of s. 772.102, Florida Statutes, relating to criminal activity, for the purpose of incorporating the amendment to s. 210.18, Florida Statutes, in a reference thereto.

Section 13. Reenacts paragraph (a) of subsection (1) of s. 895.02, Florida Statutes, relating to the definition of "racketeering activity", for the purpose of incorporating the amendments to s. 210.18, Florida Statutes, in a reference thereto.

Section 14. Provides that the act will take effect October 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation provided the following estimate of revenue collections. The total reflects an increase from \$5 to \$100 in the fee paid by distributing agents and assumes that the 78 known manufacturers operating in the state apply for and are issued cigarette permits.

<b>REVENUE</b>			
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
License Fees:	\$11,030.00	\$11,030.00	\$11,030.00
Taxes:	Possible, but indeterminate increase	Possible, but indeterminate increase	Possible, but indeterminate increase
Other (identify):	0	0	0
<b>TOTAL:</b>	<b>\$11,030.00</b>	<b>\$11,030.00</b>	<b>\$11,030.00</b>

## 2. Expenditures:

The Department's Division of Information Technology will require approximately \$200,000 in non-recurring budget authority for staff augmentation to develop, test and implement the revised computer application. The ongoing support of the computer application can be absorbed under current resources.

<b>EXPENDITURES – FUNDING SOURCE (AB&amp;T TRUST FUND)</b>			
<b>Non-Recurring Effects</b>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Operating Capital Outlay – State Stds.	7,200	0	0
Other Personal Services – Computer Application Development, Testing and Implementation	200,000	0	0
Expenses – State Stds.	12,920	0	0
<b>Subtotal</b>	<b>220,120</b>	<b>0</b>	<b>0</b>

According to the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, in order for the Division to issue permits to the new manufacturers and importers and to capture the purchase and sales information required by this bill the Division will need an additional four positions in the Tallahassee central office with combined related projected costs of \$496,305, \$280,085, and \$284,081 in FY 2005-06, FY 2006-07, FY 2007-08, respectively. The positions needed include one Regulatory Specialist II to issue the permits, two Revenue Specialist IIs to capture the reported information, and one Tax Auditor II to audit the information. Equipment and space will be needed for these positions, as well as programming to capture, record, and utilize the information.

<b>EXPENDITURES – FUNDING SOURCE (AB&amp;T TRUST FUND)</b>			
<b>Recurring Effects</b>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Salaries/Benefits # of FTE's			
1 Regulatory Spec. II	38,425	39,386	40,370
2 Revenue Specialist II	73,037	74,863	76,735
1 Tax Auditor II	44,502	45,615	46,755
Expenses	26,052	26,052	26,052
Other (Travel)	93,600	93,600	93,600
<b>Subtotal</b>	<b>275,616</b>	<b>279,516</b>	<b>283,512</b>

<b>Non-Operating Expenditures</b>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Service Charges (to General Revenue)	569	569	569
Other Indirect Costs			

Subtotal	569	569	569
----------	-----	-----	-----

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent provisions of this legislation limit the sale of counterfeit and contraband cigarettes in the state, cigarette manufacturers' whose products are subject to those abuses will benefit and legitimate businesses protected.

**D. FISCAL COMMENTS:**

In addition to the estimates revenues and expenditures listed in A. FISCAL IMPACT ON STATE GOVERNMENT, it is possible that there will be an additional cost incurred by departmental attorneys as well as the Department of Legal Affairs to prosecute offenders.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

2. Other:

The majority of new entities permitted under this proposed legislation are believed to be located outside of the state. The Division may lack legal jurisdiction to require compliance with these permitting and reporting requirements if the out-of-state shippers do not maintain a physical presence in the State of Florida thereby creating a nexus within which to bring them under Florida jurisdiction.

**B. RULE-MAKING AUTHORITY:**

The amendments to s. 210.021, Florida Statutes, as found in Section 2 of the bill direct the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation to enact rules regarding the payment of taxes by certified check or ETF.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Committee on Business Regulation

On February 22, 2005, the Committee on Business Regulation adopted one strike-all amendment by Representative Altman and approved the bill with CS, 16 Yeas, 1 Nay. This strike-all amendment addressed several deficiencies in the bill as originally filed. The CS:

- Brings all cigarette permits under a single license fee: \$100;
- Deletes application to “foreign” or off-shore manufacturers due to the state’s inability to establish jurisdiction;
- Clarifies that the provision of sample products is not impaired; also restates current exemptions for military bases, etc.
- Creates a bifurcated penalty standard: one for individuals and one for entities issued cigarette permits which recognizes the potential that a cigarette permit holder could inadvertently be in possession of a counterfeit/ contraband product;
- Corrects the unintentional repeal of the prohibition and penalty for less than 50 cartons of contraband;
- Clarifies that a newly created civil penalty is an alternative to, not in addition to, already existing civil penalties;
- Changes “shall” to “may” in penalty provision to give department discretion regarding fines; and
- Corrects drafting omissions and makes clarifying changes, mostly regarding distributing agents.

#### Committee on Finance & Tax

On March 18, 2005, the Finance & Tax Committee adopted 4 amendments. Amendments 1, 2, and 3 were technical changes. Amendment 4 addressed the civil and criminal penalties for sale or possession with intent to sell counterfeit cigarettes for various quantities of counterfeit cigarettes.

#### Commerce Council

On April 6, 2005, the Commerce Council adopted a strike-all amendment to the bill and voted the bill favorably with committee substitute. The strike-all amendment made several technical, conforming, and/or clarifying changes which were previously adopted in the Senate, including:

- Increasing bond requirements for licensees with tax liability;
- Requiring additional record keeping and reporting of seized counterfeit or contraband cigarettes;
- Raising the standard for a law enforcement officer to stop and search a vehicle believed to be carrying illegal cigarettes from “knowledge or reasonable grounds to believe” to “probable cause.”
- Adding a reference to the Florida Contraband Forfeiture Act.

In addition to those changes, the strike-all amendment added a provision to the bill which recognizes that many commercial shippers no longer utilize paper bills of lading but instead document and track cargo movement electronically.