

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to contraband and counterfeit cigarettes;
7 providing additional regulatory and enforcement measures;
8 amending s. 210.01, F.S.; revising and providing
9 definitions; amending s. 210.021, F.S.; directing the
10 Secretary of Business and Professional Regulation to
11 require certain dealers and agents to remit the tax on
12 cigarettes by certified check or electronic funds
13 transfer; requiring the Division of Alcoholic Beverages
14 and Tobacco of the department to adopt rules governing the
15 payment of taxes by electronic funds transfer; amending s.
16 210.06, F.S.; revising requirements for and limitations on
17 the affixation of stamps; providing requirements with
18 respect to receipt, possession, storage, and transport of
19 unstamped cigarette packages; amending s. 210.08, F.S.;
20 revising the amount of the surety bond, certificate of
21 deposit, or irrevocable letter of credit required by the
22 division as surety for the payment of cigarette taxes;
23 creating s. 210.085, F.S.; requiring manufacturers,

24 importers, distributing agents, dealers, and retail
25 dealers to hold a current, valid permit to sell,
26 distribute, or receive cigarettes; amending s. 210.09,
27 F.S.; providing notice and filing guidelines for certain
28 persons shipping unstamped cigarette packages; authorizing
29 certain law enforcement officials to inspect certain
30 shipping vehicles; providing for application to and
31 records requirements of manufacturers and importers;
32 amending s. 210.12, F.S.; authorizing the state to claim
33 certain property and materials from certain dealers and
34 retailers who attempt to defraud the state; authorizing
35 the destruction of certain cigarettes; amending s. 210.15,
36 F.S.; providing criteria for permit application;
37 prohibiting issuance, maintenance, or renewal of certain
38 permits for certain applicants; providing guidelines for
39 permit application denial; amending s. 210.16, F.S.;
40 revising the authority of the Division of Alcoholic
41 Beverages and Tobacco to revoke or suspend the permits of
42 certain persons under certain circumstances; revising a
43 penalty period for revoked permits; increasing a civil
44 penalty; amending s. 210.18, F.S.; expanding the group of
45 violators subject to criminal liability; expanding the
46 list of persons required to report seizures of unstamped
47 cigarettes; requiring the division to keep certain
48 records; providing for seizure of counterfeit cigarettes
49 and related machinery; making unlawful the selling or
50 possessing with intent to sell counterfeit cigarettes;
51 providing criminal penalties; providing for destruction of

52 counterfeit cigarettes; creating s. 210.181, F.S.;
 53 providing civil penalties for failure to comply with
 54 certain duties or pay certain taxes; reenacting ss.
 55 772.102(1)(a) and 895.02(1)(a), F.S., relating to crimes
 56 constituting a "criminal activity" and definitions as used
 57 in the Florida RICO Act, to incorporate the amendment to
 58 s. 210.18, F.S., in references thereto; providing an
 59 effective date.

60
 61 Be It Enacted by the Legislature of the State of Florida:

62
 63 Section 1. Subsections (6) and (7) of section 210.01,
 64 Florida Statutes, are amended, and subsections (19) through (22)
 65 are added to said section, to read:

66 210.01 Definitions.--When used in this part the following
 67 words shall have the meaning herein indicated:

68 (6) "Wholesale dealer" means any person located inside or
 69 outside this state who sells cigarettes to retail dealers or
 70 other persons for purposes of resale only, ~~or any person who~~
 71 ~~operates more than one cigarette vending machine located in more~~
 72 ~~than one place of business.~~ Such term shall not include any
 73 cigarette manufacturer, export warehouse proprietor, or importer
 74 with a valid permit under 26 U.S.C. s. 5712 if such person sells
 75 or distributes cigarettes in this state only to dealers who are
 76 agents and who hold valid and current permits under s. 210.15 or
 77 to any cigarette manufacturer, export warehouse proprietor, or
 78 importer who holds a valid and current permit under 26 U.S.C. s.
 79 5712.

80 (7) "Retail dealer" means any person located inside or
81 outside this state other than a wholesale dealer engaged in the
82 business of selling cigarettes, including persons issued a
83 permit pursuant to s. 569.003.

84 (19) "Stamp" or "stamps" means the indicia required to be
85 placed on cigarette packages that evidence payment of the tax on
86 cigarettes under s. 210.02.

87 (20) "Importer" means any person with a valid permit under
88 26 U.S.C. s. 5712 who imports into the United States, directly
89 or indirectly, a finished cigarette for sale or distribution.

90 (21) "Manufacturer" means any domestic person or entity
91 with a valid permit under 26 U.S.C. s. 5712 that manufactures,
92 fabricates, assembles, processes, or labels a finished
93 cigarette.

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

97 Section 2. Section 210.021, Florida Statutes, is amended
98 to read:

99 210.021 Payment of taxes by certified check or electronic
100 funds transfer.--

101 (1) The Secretary of Business and Professional Regulation
102 may require a dealer who sells cigarettes within the state to
103 remit by certified check or electronic funds transfer any tax
104 imposed under s. 210.02 ~~if the taxpayer is subject to the tax~~
105 ~~and if the total of such taxes he or she paid in the prior year~~
106 ~~amounted to \$50,000 or more.~~

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107 (2) The Secretary of Business and Professional Regulation
 108 shall require for a period not to exceed 12 months that a dealer
 109 or agent, during the dealer's or agent's initial period of
 110 licensure or appointment, remit by certified check or electronic
 111 funds transfer any tax imposed under s. 210.02.

112 (3) The division shall adopt rules pursuant to ss.
 113 120.536(1) and 120.54 to administer this section.

114 Section 3. Subsection (1) of section 210.06, Florida
 115 Statutes, is amended, and subsection (5) is added to said
 116 section, to read:

117 210.06 Affixation of stamps; presumption.--

118 (1) Every dealer within ~~or without~~ the state shall affix
 119 or cause to be affixed to such package or container of such
 120 cigarettes such, stamps as are required under this section
 121 within 10 days after receipt of such products. Dealers outside
 122 this state shall affix such stamps before the shipment of
 123 cigarettes into this state, ~~evidencing the payment of the tax~~
 124 ~~imposed by virtue of this part before such cigarettes are~~
 125 ~~offered for sale or use or consumed or before they are otherwise~~
 126 ~~disposed of in the state.~~

127 (a) A tax stamp shall be applied to all cigarette packages
 128 intended for sale or distribution to consumers subject to the
 129 tax imposed under s. 210.02, except as otherwise provided in
 130 this part.

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

134 (c) Dealers may apply stamps only to cigarette packages
 135 received directly from a manufacturer or importer of cigarettes,
 136 or a distributing agent representing a manufacturer or importer
 137 of cigarettes, who possesses a valid and current permit under
 138 this part.

139 (5) Except as provided in s. 210.04(9) or s. 210.09(1), no
 140 person, other than a dealer or distributing agent that receives
 141 unstamped cigarette packages directly from a cigarette
 142 manufacturer or importer in accordance with this section and s.
 143 210.085, shall hold or possess an unstamped cigarette package.
 144 Dealers shall be permitted to set aside, without application of
 145 stamps, only such part of the dealer's stock that is identified
 146 for sale or distribution outside this state. If a dealer
 147 maintains stocks of unstamped cigarette packages, such unstamped
 148 packages shall be stored separately from stamped product
 149 packages. No unstamped cigarette packages shall be transferred
 150 by a dealer to another facility of the dealer within this state
 151 or to another person within this state.

152 Section 4. Section 210.08, Florida Statutes, is amended to
 153 read:

154 210.08 Bond for payment of taxes.--Each dealer, agent, or
 155 distributing agent shall file with the division a surety bond,
 156 certificate of deposit, or irrevocable letter of credit
 157 acceptable to the division in an amount equal to 110 percent of
 158 the estimated tax liability for 30 days, but not less than
 159 \$2,000 ~~the sum of \$10,000 as surety for the payment of all~~
 160 ~~taxes; provided, however, that where in the discretion of the~~
 161 ~~division the amount of business done by the dealer, agent, or~~

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162 ~~distributing agent is of such volume that a bond, certificate of~~
 163 ~~deposit, or irrevocable letter of credit of less than \$10,000~~
 164 ~~will be adequate to secure the payment of all taxes assessed as~~
 165 ~~authorized by the cigarette tax law, the division may accept a~~
 166 ~~bond, certificate of deposit, or irrevocable letter of credit in~~
 167 ~~a lesser sum than \$10,000, but in no event shall it accept a~~
 168 ~~bond, certificate of deposit, or irrevocable letter of credit of~~
 169 ~~less than \$1,000, and it may at any time in its discretion~~
 170 ~~require any bond, certificate of deposit, or irrevocable letter~~
 171 ~~of credit in an amount less than \$10,000 to be increased not to~~
 172 ~~exceed \$10,000.~~

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

175 210.085 Transactions only with permitted manufacturers,
 176 importers, distributing agents, dealers, and retail
 177 dealers.--Except as otherwise provided in s. 210.04(9), a
 178 manufacturer or importer, or a distributing agent representing a
 179 manufacturer or importer, may sell or distribute cigarettes to a
 180 person located or doing business within this state only if such
 181 person is a dealer or importer with a valid, current permit
 182 under s. 210.15. A distributing agent may accept cigarettes from
 183 a manufacturer or importer with a valid, current permit for
 184 transfer to a dealer with a valid, current permit but may not
 185 own or sell cigarettes. A dealer may sell or distribute
 186 cigarettes to a person located or doing business within this
 187 state only if such person is a dealer or retail dealer with a
 188 valid, current permit under s. 569.003. A dealer may obtain
 189 cigarettes only from a manufacturer or importer or from a

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190 distributing agent or dealer with a valid, current permit under
 191 s. 210.15. A retail dealer may obtain cigarettes only from a
 192 dealer with a valid, current permit under s. 210.15.

193 Section 6. Subsections (1), (2), and (3) and paragraph (a)
 194 of subsection (4) of section 210.09, Florida Statutes, are
 195 amended to read:

196 210.09 Records to be kept; reports to be made;
 197 examination.--

198 (1)(a) Every person who shall possess or transport any
 199 unstamped cigarettes upon the public highways, roads, or streets
 200 of the state, shall be required to have in his or her actual
 201 possession invoices or delivery tickets for such cigarettes. The
 202 absence of such invoices or delivery tickets shall be prima
 203 facie evidence that such person is a dealer in cigarettes in
 204 this state and subject to the provisions of this part.

205 (b) Any person who ships unstamped cigarette packages into
 206 this state other than to a manufacturer, an importer, or a
 207 distributing agent representing a manufacturer or an importer,
 208 or dealer holding a valid, current permit pursuant to s. 210.15
 209 shall first file with the division a notice of such shipment.
 210 This paragraph shall not apply to any common or contract carrier
 211 that:

212 1. Is transporting cigarettes through this state to
 213 another location outside this state under a proper bill of
 214 lading or freight bill that states the quantity, source, and
 215 destination of such cigarettes or to cigarettes shipped or
 216 otherwise transported pursuant to s. 210.04(9); or

217 2. Does not issue paper bills of lading or freight bills
 218 and does not obtain specific information about the contents of
 219 the shipment that includes a description of the freight carried
 220 but uses electronic shipping documents as part of its ordinary
 221 course of business to provide transportation services for
 222 individually addressed packages weighing less than 150 pounds,
 223 which electronic shipping documents shall be made available for
 224 inspection upon request.

225 (c) In any case in which the division or its duly
 226 authorized agent, or any law enforcement officer of this state,
 227 has probable cause to believe that any vehicle is transporting
 228 cigarettes in violation of this part, the division, such agent,
 229 or such law enforcement officer is authorized to stop such
 230 vehicle and inspect the vehicle for contraband cigarettes.

231 (2) The division is authorized to prescribe and promulgate
 232 by rules and regulations, which shall have the force and effect
 233 of the law, such records to be kept and reports to be made to
 234 the division by any manufacturer, importer, distributing agent,
 235 wholesale dealer, retail dealer, common carrier, or any other
 236 person handling, transporting or possessing cigarettes for sale
 237 or distribution within the state as may be necessary to collect
 238 and properly distribute the taxes imposed by s. 210.02. All
 239 reports shall be made on or before the 10th day of the month
 240 following the month for which the report is made, unless the
 241 division by rule or regulation shall prescribe that reports be
 242 made more often.

243 (3) All manufacturers, importers, distributing agents,
 244 wholesale dealers, agents, or retail dealers shall maintain and

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245 | keep for a period of 3 years at the place of business where any
246 | transaction takes place, such records of cigarettes received,
247 | sold, or delivered within the state as may be required by the
248 | division. The division or its duly authorized representative is
249 | hereby authorized to examine the books, papers, invoices, and
250 | other records, the stock of cigarettes in and upon any premises
251 | where the same are placed, stored, and sold, and the equipment
252 | of any such manufacturers, importers, distributing agents,
253 | wholesale dealers, agents, or retail dealers, pertaining to the
254 | sale and delivery of cigarettes taxable under this part. To
255 | verify the accuracy of the tax imposed and assessed by this
256 | part, each person is hereby directed and required to give to the
257 | division or its duly authorized representatives the means,
258 | facilities, and opportunity for such examinations as are herein
259 | provided for and required.

260 | (4)(a) All persons who are either cigarette manufacturers,
261 | importers, wholesalers, ~~vending machine operators~~ or
262 | distributing agents, and agents and employees of the same, are
263 | required to keep daily sales tickets or invoices of cigarette
264 | sales and it shall be the duty of said persons to see that each
265 | sales ticket and invoice handled by them or on behalf of them
266 | show the correct name and address to whom sold and the number of
267 | packages or cartons of each brand sold. It shall also be the
268 | duty of said persons to see that each sales ticket or invoice
269 | correctly shows whether the same is inside or outside of a
270 | qualified municipality and if the sale is made within the limits
271 | of a qualified municipality, the correct name of the
272 | municipality must be indicated.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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273 Section 7. Subsection (1) of section 210.12, Florida
 274 Statutes, is amended, subsections (2) through (6) of said
 275 section are renumbered as subsections (4) through (8),
 276 respectively, and new subsections (2) and (3) are added to said
 277 section, to read:

278 210.12 Seizures; forfeiture proceedings.--

279 (1) The state, acting by and through the division, shall
 280 be authorized and empowered to seize, confiscate, and forfeit
 281 ~~for the use and benefit of the state,~~ any cigarettes upon which
 282 taxes payable hereunder may be unpaid or that are otherwise held
 283 in violation of the requirements of this chapter, and also any
 284 vending machine or receptacle in which ~~such~~ cigarettes upon
 285 which taxes have not been paid are held for sale, or any vending
 286 machine that does not have affixed thereto the identification
 287 sticker required by the provisions of s. 210.07, or which does
 288 not display at all times at least one package of each brand of
 289 cigarettes located therein so the same is clearly visible and
 290 arranged in such a manner that the cigarette tax stamp or meter
 291 impression of the stamp affixed thereto is clearly visible. Such
 292 seizure may be made by the division, its duly authorized
 293 representative, any sheriff or deputy sheriff, or any police
 294 officer.

295 (2) All fixtures, equipment, and other materials and
 296 personal property on the premises of any dealer, retail dealer,
 297 or distributing agent who, with intent to defraud the state,
 298 fails to keep or make any record, return, report, or inventory
 299 required by this part; keeps or makes any false or fraudulent
 300 record, return, report, or inventory required by this part;

301 refuses to pay any tax imposed by this part; or attempts in any
 302 manner to evade or defeat the requirements of this part shall be
 303 forfeited to the state as provided by the Florida Contraband
 304 Forfeiture Act.

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

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

309 210.15 Permits.--

310 (1)(a) Every person, firm, or corporation desiring to
 311 engage in business as a manufacturer, importer, exporter,
 312 distributing agent, or wholesale dealer of cigarettes ~~deal in~~
 313 ~~cigarettes as a distributing agent, wholesale dealer, or~~
 314 ~~exporter~~ within this state shall file with the division an
 315 application for a cigarette permit for each place of business
 316 located within this state or, in the absence of such place of
 317 business in this state, for wherever its principal place of
 318 business is located ~~with the Division of Alcoholic Beverages and~~
 319 ~~Tobacco~~. Every application for a cigarette permit shall be made
 320 on forms furnished by the division and shall set forth the name
 321 under which the applicant transacts or intends to transact
 322 business, the location of the applicant's place of business
 323 within the state, if any, and such other information as the
 324 division may require. If the applicant has or intends to have
 325 more than one place of business dealing in cigarettes within
 326 this state, the application shall state the location of each
 327 place of business. If the applicant is an association, the
 328 application shall set forth the names and addresses of the

329 persons constituting the association, and if a corporation, the
 330 names and addresses of the principal officers thereof and any
 331 other information prescribed by the division for the purpose of
 332 identification. The application shall be signed and verified by
 333 oath or affirmation by the owner, if a natural person, and in
 334 the case of an association or partnership, members or partners
 335 thereof, and in the case of a corporation, by an executive
 336 officer thereof or by any person specifically authorized by the
 337 corporation to sign the application, to which shall be attached
 338 the written evidence of this authority. ~~The cigarette permit for~~
 339 ~~a distributing agent shall be issued annually for which an~~
 340 ~~annual fee of \$5 shall be charged.~~

341 ~~(b) The holder of any duly issued, annual permit for a~~
 342 ~~distributing agent shall be entitled to a renewal of his or her~~
 343 ~~annual permit from year to year as a matter of course, on or~~
 344 ~~before July 1, upon making application to the division and upon~~
 345 ~~payment of this annual permit fee.~~

346 (b)(c) Permits ~~The permit for a distributing agent,~~
 347 ~~wholesale dealer, or exporter~~ shall be issued only to persons of
 348 good moral character, who are not less than 18 years of age.
 349 ~~Distributing agent, wholesale dealer, or exporter~~ Permits to
 350 corporations shall be issued only to corporations whose officers
 351 are of good moral character and not less than 18 years of age.
 352 There shall be no exemptions from the permit fees herein
 353 provided to any persons, association of persons, or corporation,
 354 any law to the contrary notwithstanding.

355 (c) ~~No distributing agent, wholesale dealer, or exporter~~
 356 permit under this part or chapter 569 shall be issued,

357 maintained, or renewed if the applicant, its officers, or any
 358 person or persons owning directly or indirectly, in the
 359 aggregate, more than 10 percent of the ownership interests in
 360 the applicant:

361 1. Has been finally adjudicated as owing \$500 or more in
 362 delinquent cigarette taxes;

363 2. Had a permit revoked by the division within the
 364 previous 2 years;

365 3. Has been convicted of selling stolen or counterfeit
 366 cigarettes, receiving stolen cigarettes, or being involved in
 367 the counterfeiting of cigarettes;

368 4. ~~to any person who~~ Has been convicted within the past 5
 369 years of any offense against the cigarette laws of this state or
 370 ~~who has been~~ convicted in this state, any other state, or the
 371 United States during the past 5 years of any offense designated
 372 as a felony by such state or the United States, or to a
 373 corporation, any of whose officers have been so convicted. The
 374 term "convicted conviction" shall include an adjudication of
 375 guilt on a plea of guilty or a plea of nolo contendere, or the
 376 forfeiture of a bond when charged with a crime;—

377 5. Has imported, or caused to be imported, into the United
 378 States any cigarette in violation of 19 U.S.C. s. 1681a; or

379 6. Has imported, or caused to be imported, into the United
 380 States, or manufactured for sale or distribution in the United
 381 States, any cigarette that does not fully comply with the
 382 Federal Cigarette Labeling and Advertising Act (15 U.S.C. ss.
 383 1331 et seq.).

384 (d) The division may refuse to issue a ~~distributing agent,~~
 385 ~~wholesale, or exporter~~ permit to any person, firm, or
 386 corporation whose permit under the cigarette law has been
 387 ~~revoked, or~~ to any corporation, an officer of which has had his
 388 or her permit under the cigarette law revoked, or to any person
 389 who is or has been an officer of a corporation whose permit has
 390 been revoked under the cigarette law. Any permit issued to a
 391 firm or corporation prohibited from obtaining such permit under
 392 the cigarette law may be revoked by the division.

393 (e) Prior to an application for a distributing agent,
 394 wholesale dealer, or exporter permit being approved, the
 395 applicant shall file a set of fingerprints on forms provided by
 396 the division. The applicant shall also file a set of
 397 fingerprints for any person or persons interested directly or
 398 indirectly with the applicant in the business for which the
 399 permit is being sought, when so required by the division. If the
 400 applicant or any person interested with the applicant, either
 401 directly or indirectly, in the business for which the permit is
 402 sought shall be such a person as is within the definition of
 403 persons to whom a ~~distributing agent, wholesale dealer, or~~
 404 ~~exporter~~ permit shall be denied, then the application may be
 405 denied by the division. If the applicant is a partnership, all
 406 members of the partnership are required to file said
 407 fingerprints, or if a corporation, all principal officers of the
 408 corporation are required to file said fingerprints. The
 409 cigarette permit for a manufacturer, importer, distributing
 410 agent, wholesale dealer, or exporter shall be originally issued

411 at a fee of \$100, which sum is to cover the cost of the
412 investigation required before issuing such permit.

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

418 (g) Permittees, by acceptance of their permits, agree that
419 their places of business or vehicles transporting cigarettes
420 shall always be subject to be inspected and searched without a
421 search warrant for the purpose of ascertaining that all
422 provisions of this part are complied with by authorized
423 employees of the division and also by sheriffs, deputy sheriffs,
424 and police officers during business hours or during any other
425 time such premises are occupied by the permittee or other
426 persons. Retail cigarette dealers and manufacturers'
427 representatives, by dealing in cigarettes, agree that their
428 places of business or vehicles transporting cigarettes shall
429 always be subject to inspection and search without a search
430 warrant for the purpose of ascertaining that all provisions of
431 this part are complied with by authorized employees of the
432 division and also by sheriffs, deputy sheriffs, and police
433 officers during business hours or other times when the premises
434 are occupied by the retail dealer or manufacturers'
435 representatives or other persons.

436 (h) No retail sales of cigarettes may be made at a
437 location for which a wholesale dealer, distributing agent, or
438 exporter permit has been issued. The excise tax on sales made to

439 any traveling location, such as an itinerant store or industrial
 440 caterer, shall be paid into the General Revenue Fund
 441 unallocated. Cigarettes may be purchased for retail purposes
 442 only from a person holding a wholesale dealer permit. The
 443 invoice for the purchase of cigarettes must show the place of
 444 business for which the purchase is made and the cigarettes
 445 cannot be transferred to any other place of business for the
 446 purpose of resale.

447 Section 9. Section 210.16, Florida Statutes, is amended to
 448 read:

449 210.16 Revocation or suspension of permit.--

450 (1) The Division of Alcoholic Beverages and Tobacco is
 451 given full power and authority to revoke the permit of any
 452 person ~~wholesale dealer~~ receiving a permit to engage in business
 453 under this part or chapter 569 for violation of any of the
 454 provisions of this part or chapter 569.

455 (2) The division shall revoke the permit or permits of any
 456 person who would be ineligible to obtain a new license or renew
 457 a license by reason of any of the conditions for permitting
 458 provided in s. 210.15(1)(c)1.-6.

459 (3)(2) The division may suspend for a reasonable period of
 460 time or revoke, in its discretion, the permits ~~of wholesale~~
 461 ~~dealers~~ issued under the provisions of this part or chapter 569
 462 to any person who has violated any other provision of this part
 463 or chapter 569 ~~for the same causes and under the same~~
 464 ~~limitations as is authorized hereunder to revoke the permits of~~
 465 ~~such wholesale dealers.~~

466 (4)~~(3)~~ No person ~~wholesale dealer~~ whose permit for any
 467 place of business has been revoked shall engage in business
 468 under this part or chapter 569 at such place of business after
 469 such revocation until a new permit is issued. No person
 470 ~~wholesale dealer~~ whose permit for any place of business has been
 471 revoked shall be permitted to have said permit renewed, or to
 472 obtain an additional cigarette permit for any other place of
 473 business, for a period of 2 years ~~6 months~~ after the date such
 474 revocation becomes final.

475 (5)~~(4)~~ In addition to ~~lieu of~~ the suspension or revocation
 476 of permits, the division may impose civil penalties against
 477 holders of permits for violations of this part or rules and
 478 regulations relating thereto. No civil penalty so imposed shall
 479 exceed \$2,500 ~~\$1,000~~ for each offense, and all amounts collected
 480 shall be deposited with the Chief Financial Officer to the
 481 credit of the General Revenue Fund. If the holder of the permit
 482 fails to pay the civil penalty, his or her permit shall be
 483 suspended for such period of time as the division may specify.

484 Section 10. Subsections (2), (3), and (7) of section
 485 210.18, Florida Statutes, are amended, and subsections (9) and
 486 (10) are added to said section, to read:

487 210.18 Penalties for tax evasion; reports by sheriffs.--

488 (2) Except as otherwise provided in this section, any
 489 person ~~wholesale or retail dealer~~ who fails, neglects, or
 490 refuses to comply with, or violates the provisions of, this part
 491 or the rules adopted ~~and regulations promulgated~~ by the division
 492 under this part commits ~~is guilty of~~ a misdemeanor of the first
 493 degree, punishable as provided in s. 775.082 or s. 775.083. Any

494 person ~~wholesale or retail dealer~~ who has been convicted of a
 495 violation of any provision of the cigarette tax law and who is
 496 thereafter convicted of a further violation of the cigarette tax
 497 law is, upon conviction of such further offense, guilty of a
 498 felony of the third degree, punishable as provided in s.
 499 775.082, s. 775.083, or s. 775.084.

500 (3) Any person who falsely or fraudulently makes, forges,
 501 alters, or counterfeits any stamp or impression die used in
 502 meter machines prescribed by the division under the provisions
 503 of this part; or, with intent to evade taxes, jams, tampers
 504 with, or alters such a machine; or causes or procures to be
 505 falsely or fraudulently made, forged, altered, or counterfeited
 506 any such stamp or die; or knowingly and willfully utters,
 507 purchases, passes or tenders as true any such false, altered, or
 508 counterfeited stamp or die impression; or, with the intent to
 509 defraud the state, fails to comply with any other requirement of
 510 this part commits ~~is guilty of~~ a felony of the third degree,
 511 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

512 (7) Any sheriff, deputy sheriff, ~~or~~ police officer, or
 513 state law enforcement officer, upon the seizure of any unstamped
 514 cigarettes under this section, shall promptly report such
 515 seizure to the division or its representative, together with a
 516 description of all such unstamped cigarettes seized, so that the
 517 state may be kept informed as to the size and magnitude of the
 518 illicit cigarette business. The division shall keep records
 519 showing the number of seizures and seized cigarettes reported
 520 to, or seized by, the division.

521 (9) Notwithstanding any other provision of law, the sale
 522 or possession for sale of counterfeit cigarettes by any person
 523 or by a manufacturer, importer, distributing agent, wholesale
 524 dealer, or retail dealer shall result in the seizure of the
 525 product and related machinery by the division or any law
 526 enforcement agency.

527 (10) It is unlawful to sell or possess with the intent to
 528 sell counterfeit cigarettes, as defined in s. 210.01(22).

529 (a) A person who does not hold a permit or holds a retail
 530 permit under the provisions of this chapter and who violates
 531 this subsection commits a felony of the third degree, punishable
 532 as provided in s. 775.082, s. 775.083, or s. 775.084, and is
 533 subject to the imposition of fines and additional penalties as
 534 follows:

535 1. If the quantity of counterfeit cigarettes sold or
 536 possessed with the intent to sell is less than two cartons or
 537 the equivalent, the fine for a first violation shall not exceed
 538 \$1,000 or five times the retail value of the counterfeit
 539 cigarettes, whichever is greater. A subsequent violation may
 540 result in the imposition of a fine not to exceed \$5,000 or five
 541 times the retail value of the counterfeit cigarettes, whichever
 542 is greater, and shall result in revocation of the retail permit
 543 by the division.

544 2. If the quantity of counterfeit cigarettes sold or
 545 possessed with the intent to sell is two cartons or more or the
 546 equivalent, the fine for a first violation shall not exceed
 547 \$2,000 or five times the retail value of the counterfeit
 548 cigarettes, whichever is greater. A subsequent violation may

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549 result in the imposition of a fine not to exceed \$50,000 or five
550 times the retail value of the counterfeit cigarettes, whichever
551 is greater, and shall result in revocation of the retail permit
552 by the division.

553 (b) A person who holds a permit, other than a retail
554 permit, under the provisions of this chapter and who violates
555 this subsection commits a felony of the third degree, punishable
556 as provided in s. 775.082, s. 775.083, or s. 775.084, and is
557 subject to the imposition of fines and additional penalties as
558 follows:

559 1. If the quantity of counterfeit cigarettes sold or
560 possessed with the intent to sell is less than 10 cartons or the
561 equivalent, the fine for a first violation shall not exceed
562 \$1,000 or five times the retail value of the counterfeit
563 cigarettes, whichever is greater. A subsequent violation may
564 result in the imposition of a fine not to exceed \$5,000 or five
565 times the retail value of the counterfeit cigarettes, whichever
566 is greater, and shall result in revocation of the permit by the
567 division.

568 2. If the quantity of counterfeit cigarettes sold or
569 possessed with the intent to sell is 10 cartons or more or the
570 equivalent, the fine for a first violation shall not exceed
571 \$2,000 or five times the retail value of the counterfeit
572 cigarettes, whichever is greater. A subsequent violation may
573 result in the imposition of a fine not to exceed \$50,000 or five
574 times the retail value of the counterfeit cigarettes, whichever
575 is greater, and shall result in revocation of the permit by the
576 division.

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

Section 11. Section 210.181, Florida Statutes, is created to read:

210.181 Civil penalties.--

(1) Except as provided in s. 210.16(5), whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon him or her by this part, or to do or cause to be done any of the things required by this part, or does anything prohibited by this part shall, in addition to any other penalty provided in this part, be liable for a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater.

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

Section 12. For the purpose of incorporating the amendment to section 210.18, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

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

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions:

- 604 | 1. Section 210.18, relating to evasion of payment of
605 | cigarette taxes.
- 606 | 2. Section 414.39, relating to public assistance fraud.
- 607 | 3. Section 440.105 or s. 440.106, relating to workers'
608 | compensation.
- 609 | 4. Part IV of chapter 501, relating to telemarketing.
- 610 | 5. Chapter 517, relating to securities transactions.
- 611 | 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
612 | to dogracing and horseracing.
- 613 | 7. Chapter 550, relating to jai alai frontons.
- 614 | 8. Chapter 552, relating to the manufacture, distribution,
615 | and use of explosives.
- 616 | 9. Chapter 562, relating to beverage law enforcement.
- 617 | 10. Section 624.401, relating to transacting insurance
618 | without a certificate of authority, s. 624.437(4)(c)1., relating
619 | to operating an unauthorized multiple-employer welfare
620 | arrangement, or s. 626.902(1)(b), relating to representing or
621 | aiding an unauthorized insurer.
- 622 | 11. Chapter 687, relating to interest and usurious
623 | practices.
- 624 | 12. Section 721.08, s. 721.09, or s. 721.13, relating to
625 | real estate timeshare plans.
- 626 | 13. Chapter 782, relating to homicide.
- 627 | 14. Chapter 784, relating to assault and battery.
- 628 | 15. Chapter 787, relating to kidnapping.
- 629 | 16. Chapter 790, relating to weapons and firearms.
- 630 | 17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
631 | relating to prostitution.

- 632 18. Chapter 806, relating to arson.
- 633 19. Section 810.02(2)(c), relating to specified burglary
- 634 of a dwelling or structure.
- 635 20. Chapter 812, relating to theft, robbery, and related
- 636 crimes.
- 637 21. Chapter 815, relating to computer-related crimes.
- 638 22. Chapter 817, relating to fraudulent practices, false
- 639 pretenses, fraud generally, and credit card crimes.
- 640 23. Section 827.071, relating to commercial sexual
- 641 exploitation of children.
- 642 24. Chapter 831, relating to forgery and counterfeiting.
- 643 25. Chapter 832, relating to issuance of worthless checks
- 644 and drafts.
- 645 26. Section 836.05, relating to extortion.
- 646 27. Chapter 837, relating to perjury.
- 647 28. Chapter 838, relating to bribery and misuse of public
- 648 office.
- 649 29. Chapter 843, relating to obstruction of justice.
- 650 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 651 s. 847.07, relating to obscene literature and profanity.
- 652 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 653 849.25, relating to gambling.
- 654 32. Chapter 893, relating to drug abuse prevention and
- 655 control.
- 656 33. Section 914.22 or s. 914.23, relating to witnesses,
- 657 victims, or informants.
- 658 34. Section 918.12 or s. 918.13, relating to tampering
- 659 with jurors and evidence.

660 Section 13. For the purpose of incorporating the amendment
 661 to section 210.18, Florida Statutes, in a reference thereto,
 662 paragraph (a) of subsection (1) of section 895.02, Florida
 663 Statutes, is reenacted to read:

664 895.02 Definitions.--As used in ss. 895.01-895.08, the
 665 term:

666 (1) "Racketeering activity" means to commit, to attempt to
 667 commit, to conspire to commit, or to solicit, coerce, or
 668 intimidate another person to commit:

669 (a) Any crime which is chargeable by indictment or
 670 information under the following provisions of the Florida
 671 Statutes:

672 1. Section 210.18, relating to evasion of payment of
 673 cigarette taxes.

674 2. Section 403.727(3)(b), relating to environmental
 675 control.

676 3. Section 409.920 or s. 409.9201, relating to Medicaid
 677 fraud.

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

679 5. Section 440.105 or s. 440.106, relating to workers'
 680 compensation.

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

683 7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
 684 499.0691, relating to crimes involving contraband and
 685 adulterated drugs.

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

- 687 9. Chapter 517, relating to sale of securities and
688 investor protection.
- 689 10. Section 550.235, s. 550.3551, or s. 550.3605, relating
690 to dogracing and horseracing.
- 691 11. Chapter 550, relating to jai alai frontons.
- 692 12. Chapter 552, relating to the manufacture,
693 distribution, and use of explosives.
- 694 13. Chapter 560, relating to money transmitters, if the
695 violation is punishable as a felony.
- 696 14. Chapter 562, relating to beverage law enforcement.
- 697 15. Section 624.401, relating to transacting insurance
698 without a certificate of authority, s. 624.437(4)(c)1., relating
699 to operating an unauthorized multiple-employer welfare
700 arrangement, or s. 626.902(1)(b), relating to representing or
701 aiding an unauthorized insurer.
- 702 16. Section 655.50, relating to reports of currency
703 transactions, when such violation is punishable as a felony.
- 704 17. Chapter 687, relating to interest and usurious
705 practices.
- 706 18. Section 721.08, s. 721.09, or s. 721.13, relating to
707 real estate timeshare plans.
- 708 19. Chapter 782, relating to homicide.
- 709 20. Chapter 784, relating to assault and battery.
- 710 21. Chapter 787, relating to kidnapping.
- 711 22. Chapter 790, relating to weapons and firearms.
- 712 23. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
713 796.05, or s. 796.07, relating to prostitution and sex
714 trafficking.

- 715 24. Chapter 806, relating to arson.
- 716 25. Section 810.02(2)(c), relating to specified burglary
- 717 of a dwelling or structure.
- 718 26. Chapter 812, relating to theft, robbery, and related
- 719 crimes.
- 720 27. Chapter 815, relating to computer-related crimes.
- 721 28. Chapter 817, relating to fraudulent practices, false
- 722 pretenses, fraud generally, and credit card crimes.
- 723 29. Chapter 825, relating to abuse, neglect, or
- 724 exploitation of an elderly person or disabled adult.
- 725 30. Section 827.071, relating to commercial sexual
- 726 exploitation of children.
- 727 31. Chapter 831, relating to forgery and counterfeiting.
- 728 32. Chapter 832, relating to issuance of worthless checks
- 729 and drafts.
- 730 33. Section 836.05, relating to extortion.
- 731 34. Chapter 837, relating to perjury.
- 732 35. Chapter 838, relating to bribery and misuse of public
- 733 office.
- 734 36. Chapter 843, relating to obstruction of justice.
- 735 37. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 736 s. 847.07, relating to obscene literature and profanity.
- 737 38. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 738 849.25, relating to gambling.
- 739 39. Chapter 874, relating to criminal street gangs.
- 740 40. Chapter 893, relating to drug abuse prevention and
- 741 control.

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742 41. Chapter 896, relating to offenses related to financial
743 transactions.

744 42. Sections 914.22 and 914.23, relating to tampering with
745 a witness, victim, or informant, and retaliation against a
746 witness, victim, or informant.

747 43. Sections 918.12 and 918.13, relating to tampering with
748 jurors and evidence.

749 Section 14. This act shall take effect October 1, 2005.