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HB 205, Engrossed 1

2005 Legislature

1 A bill to be entitled
2 An act relating to contraband and counterfeit cigarettes;
3 providing additional regulatory and enforcement measures;
4 amending s. 210.01, F.S.; revising and providing
5 definitions; amending s. 210.021, F.S.; directing the
6 Secretary of Business and Professional Regulation to
7 require certain dealers and agents to remit the tax on
8 cigarettes by certified check or electronic funds
9 transfer; requiring the Division of Alcoholic Beverages
10 and Tobacco of the department to adopt rules governing the
11 payment of taxes by electronic funds transfer; amending s.
12 210.06, F.S.; revising requirements for and limitations on
13 the affixation of stamps; providing requirements with
14 respect to receipt, possession, storage, and transport of
15 unstamped cigarette packages; amending s. 210.08, F.S.;
16 revising the amount of the surety bond, certificate of
17 deposit, or irrevocable letter of credit required by the
18 division as surety for the payment of cigarette taxes;
19 creating s. 210.085, F.S.; requiring manufacturers,
20 importers, distributing agents, dealers, and retail
21 dealers to hold a current, valid permit to sell,
22 distribute, or receive cigarettes; amending s. 210.09,
23 F.S.; providing notice and filing guidelines for certain
24 persons shipping unstamped cigarette packages; authorizing
25 certain law enforcement officials to inspect certain
26 shipping vehicles; providing for application to and
27 records requirements of manufacturers and importers;
28 amending s. 210.12, F.S.; authorizing the state to claim

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

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29 | certain property and materials from certain dealers and
30 | retailers who attempt to defraud the state; authorizing
31 | the destruction of certain cigarettes; amending s. 210.15,
32 | F.S.; providing criteria for permit application;
33 | prohibiting issuance, maintenance, or renewal of certain
34 | permits for certain applicants; providing guidelines for
35 | permit application denial; amending s. 210.16, F.S.;
36 | revising the authority of the Division of Alcoholic
37 | Beverages and Tobacco to revoke or suspend the permits of
38 | certain persons under certain circumstances; revising a
39 | penalty period for revoked permits; increasing a civil
40 | penalty; amending s. 210.18, F.S.; expanding the group of
41 | violators subject to criminal liability; expanding the
42 | list of persons required to report seizures of unstamped
43 | cigarettes; requiring the division to keep certain
44 | records; providing for seizure of counterfeit cigarettes
45 | and related machinery; making unlawful the selling or
46 | possessing with intent to sell counterfeit cigarettes;
47 | providing criminal penalties; providing for destruction of
48 | counterfeit cigarettes; creating s. 210.181, F.S.;
49 | providing civil penalties for failure to comply with
50 | certain duties or pay certain taxes; reenacting ss.
51 | 772.102(1)(a) and 895.02(1)(a), F.S., relating to crimes
52 | constituting a "criminal activity" and definitions as used
53 | in the Florida RICO Act, to incorporate the amendment to
54 | s. 210.18, F.S., in references thereto; providing an
55 | effective date.

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57 | Be It Enacted by the Legislature of the State of Florida:

58 |
 59 | Section 1. Subsections (6) and (7) of section 210.01,
 60 | Florida Statutes, are amended, and subsections (19) through (22)
 61 | are added to said section, to read:

62 | 210.01 Definitions.--When used in this part the following
 63 | words shall have the meaning herein indicated:

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

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

80 | (19) "Stamp" or "stamps" means the indicia required to be
 81 | placed on cigarette packages that evidence payment of the tax on
 82 | cigarettes under s. 210.02.

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83 (20) "Importer" means any person with a valid permit under
 84 26 U.S.C. s. 5712 who imports into the United States, directly
 85 or indirectly, a finished cigarette for sale or distribution.

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

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

93 Section 2. Section 210.021, Florida Statutes, is amended
 94 to read:

95 210.021 Payment of taxes by certified check or electronic
 96 funds transfer.--

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

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

108 (3) The division shall adopt rules pursuant to ss.
 109 120.536(1) and 120.54 to administer this section.

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110 Section 3. Subsection (1) of section 210.06, Florida
 111 Statutes, is amended, and subsection (5) is added to said
 112 section, to read:

113 210.06 Affixation of stamps; presumption.--

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

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

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

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

135 (5) Except as provided in s. 210.04(9) or s. 210.09(1), no
 136 person, other than a dealer or distributing agent that receives
 137 unstamped cigarette packages directly from a cigarette

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138 manufacturer or importer in accordance with this section and s.
 139 210.085, shall hold or possess an unstamped cigarette package.
 140 Dealers shall be permitted to set aside, without application of
 141 stamps, only such part of the dealer's stock that is identified
 142 for sale or distribution outside this state. If a dealer
 143 maintains stocks of unstamped cigarette packages, such unstamped
 144 packages shall be stored separately from stamped product
 145 packages. No unstamped cigarette packages shall be transferred
 146 by a dealer to another facility of the dealer within this state
 147 or to another person within this state.

148 Section 4. Section 210.08, Florida Statutes, is amended to
 149 read:

150 210.08 Bond for payment of taxes.--Each dealer, agent, or
 151 distributing agent shall file with the division a surety bond,
 152 certificate of deposit, or irrevocable letter of credit
 153 acceptable to the division in an amount equal to 110 percent of
 154 the estimated tax liability for 30 days, but not less than
 155 \$2,000 ~~the sum of \$10,000 as surety for the payment of all~~
 156 ~~taxes; provided, however, that where in the discretion of the~~
 157 ~~division the amount of business done by the dealer, agent, or~~
 158 ~~distributing agent is of such volume that a bond, certificate of~~
 159 ~~deposit, or irrevocable letter of credit of less than \$10,000~~
 160 ~~will be adequate to secure the payment of all taxes assessed as~~
 161 ~~authorized by the cigarette tax law, the division may accept a~~
 162 ~~bond, certificate of deposit, or irrevocable letter of credit in~~
 163 ~~a lesser sum than \$10,000, but in no event shall it accept a~~
 164 ~~bond, certificate of deposit, or irrevocable letter of credit of~~
 165 ~~less than \$1,000, and it may at any time in its discretion~~

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166 ~~require any bond, certificate of deposit, or irrevocable letter~~
 167 ~~of credit in an amount less than \$10,000 to be increased not to~~
 168 ~~exceed \$10,000.~~

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

171 210.085 Transactions only with permitted manufacturers,
 172 importers, distributing agents, dealers, and retail
 173 dealers.--Except as otherwise provided in s. 210.04(9), a
 174 manufacturer or importer, or a distributing agent representing a
 175 manufacturer or importer, may sell or distribute cigarettes to a
 176 person located or doing business within this state only if such
 177 person is a dealer or importer with a valid, current permit
 178 under s. 210.15. A distributing agent may accept cigarettes from
 179 a manufacturer or importer with a valid, current permit for
 180 transfer to a dealer with a valid, current permit but may not
 181 own or sell cigarettes. A dealer may sell or distribute
 182 cigarettes to a person located or doing business within this
 183 state only if such person is a dealer or retail dealer with a
 184 valid, current permit under s. 569.003. A dealer may obtain
 185 cigarettes only from a manufacturer or importer or from a
 186 distributing agent or dealer with a valid, current permit under
 187 s. 210.15. A retail dealer may obtain cigarettes only from a
 188 dealer with a valid, current permit under s. 210.15.

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

192 210.09 Records to be kept; reports to be made;
 193 examination.--

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

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

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

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

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

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

239 (3) All manufacturers, importers, distributing agents,
240 wholesale dealers, agents, or retail dealers shall maintain and
241 keep for a period of 3 years at the place of business where any
242 transaction takes place, such records of cigarettes received,
243 sold, or delivered within the state as may be required by the
244 division. The division or its duly authorized representative is
245 hereby authorized to examine the books, papers, invoices, and
246 other records, the stock of cigarettes in and upon any premises
247 where the same are placed, stored, and sold, and the equipment
248 of any such manufacturers, importers, distributing agents,

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249 wholesale dealers, agents, or retail dealers, pertaining to the
 250 sale and delivery of cigarettes taxable under this part. To
 251 verify the accuracy of the tax imposed and assessed by this
 252 part, each person is hereby directed and required to give to the
 253 division or its duly authorized representatives the means,
 254 facilities, and opportunity for such examinations as are herein
 255 provided for and required.

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

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

274 210.12 Seizures; forfeiture proceedings.--

275 (1) The state, acting by and through the division, shall
 276 be authorized and empowered to seize, confiscate, and forfeit

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

291 (2) All fixtures, equipment, and other materials and
 292 personal property on the premises of any dealer, retail dealer,
 293 or distributing agent who, with intent to defraud the state,
 294 fails to keep or make any record, return, report, or inventory
 295 required by this part; keeps or makes any false or fraudulent
 296 record, return, report, or inventory required by this part;
 297 refuses to pay any tax imposed by this part; or attempts in any
 298 manner to evade or defeat the requirements of this part shall be
 299 forfeited to the state as provided by the Florida Contraband
 300 Forfeiture Act.

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

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

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305 210.15 Permits.--

306 (1) (a) Every person, firm, or corporation desiring to

307 engage in business as a manufacturer, importer, exporter,

308 distributing agent, or wholesale dealer of cigarettes ~~deal in~~

309 ~~cigarettes as a distributing agent, wholesale dealer, or~~

310 ~~exporter~~ within this state shall file with the division an

311 application for a cigarette permit for each place of business

312 located within this state or, in the absence of such place of

313 business in this state, for wherever its principal place of

314 business is located ~~with the Division of Alcoholic Beverages and~~

315 ~~Tobacco~~. Every application for a cigarette permit shall be made

316 on forms furnished by the division and shall set forth the name

317 under which the applicant transacts or intends to transact

318 business, the location of the applicant's place of business

319 within the state, if any, and such other information as the

320 division may require. If the applicant has or intends to have

321 more than one place of business dealing in cigarettes within

322 this state, the application shall state the location of each

323 place of business. If the applicant is an association, the

324 application shall set forth the names and addresses of the

325 persons constituting the association, and if a corporation, the

326 names and addresses of the principal officers thereof and any

327 other information prescribed by the division for the purpose of

328 identification. The application shall be signed and verified by

329 oath or affirmation by the owner, if a natural person, and in

330 the case of an association or partnership, members or partners

331 thereof, and in the case of a corporation, by an executive

332 officer thereof or by any person specifically authorized by the

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333 corporation to sign the application, to which shall be attached
 334 the written evidence of this authority. ~~The cigarette permit for~~
 335 ~~a distributing agent shall be issued annually for which an~~
 336 ~~annual fee of \$5 shall be charged.~~

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

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

351 (c) No distributing agent, wholesale dealer, or exporter
 352 permit under this part or chapter 569 shall be issued,
 353 maintained, or renewed if the applicant, its officers, or any
 354 person or persons owning directly or indirectly, in the
 355 aggregate, more than 10 percent of the ownership interests in
 356 the applicant:

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

359 2. Had a permit revoked by the division within the
 360 previous 2 years;

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361 3. Has been convicted of selling stolen or counterfeit
362 cigarettes, receiving stolen cigarettes, or being involved in
363 the counterfeiting of cigarettes;

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

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

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

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

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389 (e) Prior to an application for a distributing agent,
 390 wholesale dealer, or exporter permit being approved, the
 391 applicant shall file a set of fingerprints on forms provided by
 392 the division. The applicant shall also file a set of
 393 fingerprints for any person or persons interested directly or
 394 indirectly with the applicant in the business for which the
 395 permit is being sought, when so required by the division. If the
 396 applicant or any person interested with the applicant, either
 397 directly or indirectly, in the business for which the permit is
 398 sought shall be such a person as is within the definition of
 399 persons to whom a ~~distributing agent, wholesale dealer, or~~
 400 ~~exporter~~ permit shall be denied, then the application may be
 401 denied by the division. If the applicant is a partnership, all
 402 members of the partnership are required to file said
 403 fingerprints, or if a corporation, all principal officers of the
 404 corporation are required to file said fingerprints. The
 405 cigarette permit for a manufacturer, importer, distributing
 406 agent, wholesale dealer, or exporter shall be originally issued
 407 at a fee of \$100, which sum is to cover the cost of the
 408 investigation required before issuing such permit.

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

414 (g) Permittees, by acceptance of their permits, agree that
 415 their places of business or vehicles transporting cigarettes
 416 shall always be subject to be inspected and searched without a

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

432 (h) No retail sales of cigarettes may be made at a
433 location for which a wholesale dealer, distributing agent, or
434 exporter permit has been issued. The excise tax on sales made to
435 any traveling location, such as an itinerant store or industrial
436 caterer, shall be paid into the General Revenue Fund
437 unallocated. Cigarettes may be purchased for retail purposes
438 only from a person holding a wholesale dealer permit. The
439 invoice for the purchase of cigarettes must show the place of
440 business for which the purchase is made and the cigarettes
441 cannot be transferred to any other place of business for the
442 purpose of resale.

443 Section 9. Section 210.16, Florida Statutes, is amended to
444 read:

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445 210.16 Revocation or suspension of permit.--

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

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

455 ~~(3)~~ ~~(2)~~ The division may suspend for a reasonable period of
 456 time or revoke, in its discretion, the permits ~~of wholesale~~
 457 ~~dealers~~ issued under the provisions of this part or chapter 569
 458 to any person who has violated any other provision of this part
 459 or chapter 569 ~~for the same causes and under the same~~
 460 ~~limitations as is authorized hereunder to revoke the permits of~~
 461 ~~such wholesale dealers.~~

462 ~~(4)~~ ~~(3)~~ No person ~~wholesale dealer~~ whose permit for any
 463 place of business has been revoked shall engage in business
 464 under this part or chapter 569 at such place of business after
 465 such revocation until a new permit is issued. No person
 466 ~~wholesale dealer~~ whose permit for any place of business has been
 467 revoked shall be permitted to have said permit renewed, or to
 468 obtain an additional cigarette permit for any other place of
 469 business, for a period of 2 years ~~6 months~~ after the date such
 470 revocation becomes final.

471 ~~(5)~~ ~~(4)~~ In addition to ~~lieu of~~ the suspension or revocation
 472 of permits, the division may impose civil penalties against

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473 holders of permits for violations of this part or rules and
474 regulations relating thereto. No civil penalty so imposed shall
475 exceed \$2,500 ~~\$1,000~~ for each offense, and all amounts collected
476 shall be deposited with the Chief Financial Officer to the
477 credit of the General Revenue Fund. If the holder of the permit
478 fails to pay the civil penalty, his or her permit shall be
479 suspended for such period of time as the division may specify.

480 Section 10. Subsections (2), (3), and (7) of section
481 210.18, Florida Statutes, are amended, and subsections (9) and
482 (10) are added to said section, to read:

483 210.18 Penalties for tax evasion; reports by sheriffs.--

484 (2) Except as otherwise provided in this section, any
485 person ~~wholesale or retail dealer~~ who fails, neglects, or
486 refuses to comply with, or violates the provisions of, this part
487 or the rules adopted ~~and regulations promulgated~~ by the division
488 under this part commits ~~is guilty of~~ a misdemeanor of the first
489 degree, punishable as provided in s. 775.082 or s. 775.083. Any
490 person ~~wholesale or retail dealer~~ who has been convicted of a
491 violation of any provision of the cigarette tax law and who is
492 thereafter convicted of a further violation of the cigarette tax
493 law is, upon conviction of such further offense, guilty of a
494 felony of the third degree, punishable as provided in s.
495 775.082, s. 775.083, or s. 775.084.

496 (3) Any person who falsely or fraudulently makes, forges,
497 alters, or counterfeits any stamp or impression die used in
498 meter machines prescribed by the division under the provisions
499 of this part; or, with intent to evade taxes, jams, tampers
500 with, or alters such a machine; or causes or procures to be

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501 | falsely or fraudulently made, forged, altered, or counterfeited
 502 | any such stamp or die; or knowingly and willfully utters,
 503 | purchases, passes or tenders as true any such false, altered, or
 504 | counterfeited stamp or die impression; or, with the intent to
 505 | defraud the state, fails to comply with any other requirement of
 506 | this part commits ~~is guilty of~~ a felony of the third degree,
 507 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

525 | (a) A person who does not hold a permit or holds a retail
 526 | permit under the provisions of this chapter and who violates
 527 | this subsection commits a felony of the third degree, punishable
 528 | as provided in s. 775.082, s. 775.083, or s. 775.084, and is

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529 subject to the imposition of fines and additional penalties as
530 follows:

531 1. If the quantity of counterfeit cigarettes sold or
532 possessed with the intent to sell is less than two cartons or
533 the equivalent, the fine for a first violation shall not exceed
534 \$1,000 or five times the retail value of the counterfeit
535 cigarettes, whichever is greater. A subsequent violation may
536 result in the imposition of a fine not to exceed \$5,000 or five
537 times the retail value of the counterfeit cigarettes, whichever
538 is greater, and shall result in revocation of the retail permit
539 by the division.

540 2. If the quantity of counterfeit cigarettes sold or
541 possessed with the intent to sell is two cartons or more or the
542 equivalent, the fine for a first violation shall not exceed
543 \$2,000 or five times the retail value of the counterfeit
544 cigarettes, whichever is greater. A subsequent violation may
545 result in the imposition of a fine not to exceed \$50,000 or five
546 times the retail value of the counterfeit cigarettes, whichever
547 is greater, and shall result in revocation of the retail permit
548 by the division.

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

555 1. If the quantity of counterfeit cigarettes sold or
556 possessed with the intent to sell is less than 10 cartons or the

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557 equivalent, the fine for a first violation shall not exceed
558 \$1,000 or five times the retail value of the counterfeit
559 cigarettes, whichever is greater. A subsequent violation may
560 result in the imposition of a fine not to exceed \$5,000 or five
561 times the retail value of the counterfeit cigarettes, whichever
562 is greater, and shall result in revocation of the permit by the
563 division.

564 2. If the quantity of counterfeit cigarettes sold or
565 possessed with the intent to sell is 10 cartons or more or the
566 equivalent, the fine for a first violation shall not exceed
567 \$2,000 or five times the retail value of the counterfeit
568 cigarettes, whichever is greater. A subsequent violation may
569 result in the imposition of a fine not to exceed \$50,000 or five
570 times the retail value of the counterfeit cigarettes, whichever
571 is greater, and shall result in revocation of the permit by the
572 division.

573
574 For purposes of this subsection, any counterfeit cigarettes
575 seized by the division shall be destroyed.

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

578 210.181 Civil penalties.--

579 (1) Except as provided in s. 210.16(5), whoever knowingly
580 omits, neglects, or refuses to comply with any duty imposed upon
581 him or her by this part, or to do or cause to be done any of the
582 things required by this part, or does anything prohibited by
583 this part shall, in addition to any other penalty provided in

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584 this part, be liable for a fine of \$1,000 or five times the
 585 retail value of the cigarettes involved, whichever is greater.

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

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

594 772.102 Definitions.--As used in this chapter, the term:

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

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

600 1. Section 210.18, relating to evasion of payment of
 601 cigarette taxes.

602 2. Section 414.39, relating to public assistance fraud.

603 3. Section 440.105 or s. 440.106, relating to workers'
 604 compensation.

605 4. Part IV of chapter 501, relating to telemarketing.

606 5. Chapter 517, relating to securities transactions.

607 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
 608 to dogracing and horseracing.

609 7. Chapter 550, relating to jai alai frontons.

610 8. Chapter 552, relating to the manufacture, distribution,
 611 and use of explosives.

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- 612 | 9. Chapter 562, relating to beverage law enforcement.
- 613 | 10. Section 624.401, relating to transacting insurance
- 614 | without a certificate of authority, s. 624.437(4)(c)1., relating
- 615 | to operating an unauthorized multiple-employer welfare
- 616 | arrangement, or s. 626.902(1)(b), relating to representing or
- 617 | aiding an unauthorized insurer.
- 618 | 11. Chapter 687, relating to interest and usurious
- 619 | practices.
- 620 | 12. Section 721.08, s. 721.09, or s. 721.13, relating to
- 621 | real estate timeshare plans.
- 622 | 13. Chapter 782, relating to homicide.
- 623 | 14. Chapter 784, relating to assault and battery.
- 624 | 15. Chapter 787, relating to kidnapping.
- 625 | 16. Chapter 790, relating to weapons and firearms.
- 626 | 17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07,
- 627 | relating to prostitution.
- 628 | 18. Chapter 806, relating to arson.
- 629 | 19. Section 810.02(2)(c), relating to specified burglary
- 630 | of a dwelling or structure.
- 631 | 20. Chapter 812, relating to theft, robbery, and related
- 632 | crimes.
- 633 | 21. Chapter 815, relating to computer-related crimes.
- 634 | 22. Chapter 817, relating to fraudulent practices, false
- 635 | pretenses, fraud generally, and credit card crimes.
- 636 | 23. Section 827.071, relating to commercial sexual
- 637 | exploitation of children.
- 638 | 24. Chapter 831, relating to forgery and counterfeiting.

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- 639 25. Chapter 832, relating to issuance of worthless checks
640 and drafts.
- 641 26. Section 836.05, relating to extortion.
- 642 27. Chapter 837, relating to perjury.
- 643 28. Chapter 838, relating to bribery and misuse of public
644 office.
- 645 29. Chapter 843, relating to obstruction of justice.
- 646 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
647 s. 847.07, relating to obscene literature and profanity.
- 648 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
649 849.25, relating to gambling.
- 650 32. Chapter 893, relating to drug abuse prevention and
651 control.
- 652 33. Section 914.22 or s. 914.23, relating to witnesses,
653 victims, or informants.
- 654 34. Section 918.12 or s. 918.13, relating to tampering
655 with jurors and evidence.
- 656 Section 13. For the purpose of incorporating the amendment
657 to section 210.18, Florida Statutes, in a reference thereto,
658 paragraph (a) of subsection (1) of section 895.02, Florida
659 Statutes, is reenacted to read:
- 660 895.02 Definitions.--As used in ss. 895.01-895.08, the
661 term:
- 662 (1) "Racketeering activity" means to commit, to attempt to
663 commit, to conspire to commit, or to solicit, coerce, or
664 intimidate another person to commit:

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- 665 (a) Any crime which is chargeable by indictment or
 666 information under the following provisions of the Florida
 667 Statutes:
- 668 1. Section 210.18, relating to evasion of payment of
 669 cigarette taxes.
 - 670 2. Section 403.727(3)(b), relating to environmental
 671 control.
 - 672 3. Section 409.920 or s. 409.9201, relating to Medicaid
 673 fraud.
 - 674 4. Section 414.39, relating to public assistance fraud.
 - 675 5. Section 440.105 or s. 440.106, relating to workers'
 676 compensation.
 - 677 6. Section 465.0161, relating to distribution of medicinal
 678 drugs without a permit as an Internet pharmacy.
 - 679 7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
 680 499.0691, relating to crimes involving contraband and
 681 adulterated drugs.
 - 682 8. Part IV of chapter 501, relating to telemarketing.
 - 683 9. Chapter 517, relating to sale of securities and
 684 investor protection.
 - 685 10. Section 550.235, s. 550.3551, or s. 550.3605, relating
 686 to dogracing and horseracing.
 - 687 11. Chapter 550, relating to jai alai frontons.
 - 688 12. Chapter 552, relating to the manufacture,
 689 distribution, and use of explosives.
 - 690 13. Chapter 560, relating to money transmitters, if the
 691 violation is punishable as a felony.
 - 692 14. Chapter 562, relating to beverage law enforcement.

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693 | 15. Section 624.401, relating to transacting insurance
 694 | without a certificate of authority, s. 624.437(4)(c)1., relating
 695 | to operating an unauthorized multiple-employer welfare
 696 | arrangement, or s. 626.902(1)(b), relating to representing or
 697 | aiding an unauthorized insurer.

698 | 16. Section 655.50, relating to reports of currency
 699 | transactions, when such violation is punishable as a felony.

700 | 17. Chapter 687, relating to interest and usurious
 701 | practices.

702 | 18. Section 721.08, s. 721.09, or s. 721.13, relating to
 703 | real estate timeshare plans.

704 | 19. Chapter 782, relating to homicide.

705 | 20. Chapter 784, relating to assault and battery.

706 | 21. Chapter 787, relating to kidnapping.

707 | 22. Chapter 790, relating to weapons and firearms.

708 | 23. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s.
 709 | 796.05, or s. 796.07, relating to prostitution and sex
 710 | trafficking.

711 | 24. Chapter 806, relating to arson.

712 | 25. Section 810.02(2)(c), relating to specified burglary
 713 | of a dwelling or structure.

714 | 26. Chapter 812, relating to theft, robbery, and related
 715 | crimes.

716 | 27. Chapter 815, relating to computer-related crimes.

717 | 28. Chapter 817, relating to fraudulent practices, false
 718 | pretenses, fraud generally, and credit card crimes.

719 | 29. Chapter 825, relating to abuse, neglect, or
 720 | exploitation of an elderly person or disabled adult.

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- 721 | 30. Section 827.071, relating to commercial sexual
- 722 | exploitation of children.
- 723 | 31. Chapter 831, relating to forgery and counterfeiting.
- 724 | 32. Chapter 832, relating to issuance of worthless checks
- 725 | and drafts.
- 726 | 33. Section 836.05, relating to extortion.
- 727 | 34. Chapter 837, relating to perjury.
- 728 | 35. Chapter 838, relating to bribery and misuse of public
- 729 | office.
- 730 | 36. Chapter 843, relating to obstruction of justice.
- 731 | 37. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 732 | s. 847.07, relating to obscene literature and profanity.
- 733 | 38. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 734 | 849.25, relating to gambling.
- 735 | 39. Chapter 874, relating to criminal street gangs.
- 736 | 40. Chapter 893, relating to drug abuse prevention and
- 737 | control.
- 738 | 41. Chapter 896, relating to offenses related to financial
- 739 | transactions.
- 740 | 42. Sections 914.22 and 914.23, relating to tampering with
- 741 | a witness, victim, or informant, and retaliation against a
- 742 | witness, victim, or informant.
- 743 | 43. Sections 918.12 and 918.13, relating to tampering with
- 744 | jurors and evidence.
- 745 | Section 14. This act shall take effect October 1, 2005.