

Bill No. SB 816

Barcode 103486

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Haridopolos)  
recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

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

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1 current permits under s. 210.15 or to any cigarette  
2 manufacturer, export warehouse proprietor, or importer who  
3 holds a valid and current permit under 26 U.S.C. s. 5712.

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

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

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

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

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

22 Section 2. Section 210.021, Florida Statutes, is  
23 amended to read:

24 210.021 Payment of taxes by electronic funds  
25 transfer.--

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

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1       (2) The Secretary of Business and Professional  
 2 Regulation shall require for a period not to exceed 12 months  
 3 that a dealer or agent, during the dealer's or agent's initial  
 4 period of licensure or appointment, remit by electronic funds  
 5 transfer any tax imposed under s. 210.02.

6       (3) The division shall adopt rules pursuant to ss.  
 7 120.536(1) and 120.54 to administer this section.

8           Section 3. Subsection (1) of section 210.06, Florida  
 9 Statutes, is amended, and subsection (5) is added to said  
 10 section, to read:

11           210.06 Affixation of stamps; presumption.--

12           (1) Every dealer within ~~or without~~ the state shall  
 13 affix or cause to be affixed to such package or container of  
 14 such cigarettes ~~such~~, stamps as are required under this  
 15 section within 10 days after receipt of such products. Dealers  
 16 outside this state shall affix such stamps before the shipment  
 17 of cigarettes into this state, evidencing the payment of the  
 18 tax imposed by virtue of this part before such cigarettes are  
 19 offered for sale or use or consumed or before they are  
 20 otherwise disposed of in the state.

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

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

28           (c) Dealers may apply stamps only to cigarette  
 29 packages received directly from a manufacturer or importer of  
 30 cigarettes, or a distributing agent representing a  
 31 manufacturer or importer of cigarettes, who possesses a valid

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1 and current permit under this part.

2 (5) Except as provided in s. 210.04(9) or s.

3 210.09(1), no person, other than a dealer or distributing

4 agent that receives unstamped cigarette packages directly from

5 a cigarette manufacturer or importer in accordance with this

6 section and s. 210.085, shall hold or possess an unstamped

7 cigarette package. Dealers shall be permitted to set aside,

8 without application of stamps, only such part of the dealer's

9 stock that is identified for sale or distribution outside this

10 state. If a dealer maintains stocks of unstamped cigarette

11 packages, such unstamped packages shall be stored separately

12 from stamped product packages. No unstamped cigarette packages

13 shall be transferred by a dealer to another facility of the

14 dealer within this state or to another person within this

15 state.

16 Section 4. Section 210.08, Florida Statutes, is  
17 amended to read:

18 210.08 Bond for payment of taxes.--Each dealer, agent,  
19 or distributing agent shall file with the division a surety  
20 bond, certificate of deposit, or irrevocable letter of credit  
21 acceptable to the division in an amount of 110 percent of the  
22 estimated tax liability for 30 days, but not less than \$2,000.

23 ~~the sum of \$10,000 as surety for the payment of all taxes;~~

24 ~~provided, however, that where in the discretion of the~~

25 ~~division the amount of business done by the dealer, agent, or~~

26 ~~distributing agent is of such volume that a bond, certificate~~

27 ~~of deposit, or irrevocable letter of credit of less than~~

28 ~~\$10,000 will be adequate to secure the payment of all taxes~~

29 ~~assessed as authorized by the cigarette tax law, the division~~

30 ~~may accept a bond, certificate of deposit, or irrevocable~~

31 ~~letter of credit in a lesser sum than \$10,000, but in no event~~

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1 ~~shall it accept a bond, certificate of deposit, or irrevocable~~  
 2 ~~letter of credit of less than \$1,000, and it may at any time~~  
 3 ~~in its discretion require any bond, certificate of deposit, or~~  
 4 ~~irrevocable letter of credit in an amount less than \$10,000 to~~  
 5 ~~be increased not to exceed \$10,000.~~

6 Section 5. Section 210.085, Florida Statutes, is  
 7 created to read:

8 210.085 Transactions only with permitted  
 9 manufacturers, importers, distributing agents, dealers, and  
 10 retail dealers.--Except as otherwise provided in s. 210.04(9),  
 11 a manufacturer or importer, or a distributing agent  
 12 representing a manufacturer or importer, may sell or  
 13 distribute cigarettes to a person located or doing business  
 14 within this state only if such person is a dealer or importer  
 15 with a valid, current permit under s. 210.15. A distributing  
 16 agent may accept cigarettes from a manufacturer or importer  
 17 with a valid, current permit for transfer to a dealer with a  
 18 valid, current permit but may not own or sell cigarettes. A  
 19 dealer may sell or distribute cigarettes to a person located  
 20 or doing business within this state only if such person is a  
 21 dealer or retail dealer with a valid, current permit under s.  
 22 569.003. A dealer may obtain cigarettes only from a  
 23 manufacturer or importer or from a distributing agent or  
 24 dealer with a valid, current permit under s. 210.15. A retail  
 25 dealer may obtain cigarettes only from a dealer with a valid,  
 26 current permit under s. 210.15.

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

30 210.09 Records to be kept; reports to be made;  
 31 examination.--

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1           (1)(a) Every person who shall possess or transport any  
 2 unstamped cigarettes upon the public highways, roads, or  
 3 streets of the state, shall be required to have in his or her  
 4 actual possession invoices or delivery tickets for such  
 5 cigarettes. The absence of such invoices or delivery tickets  
 6 shall be prima facie evidence that such person is a dealer in  
 7 cigarettes in this state and subject to the provisions of this  
 8 part.

9           (b) Any person who ships unstamped cigarette packages  
 10 into this state other than to a manufacturer, an importer, or  
 11 a distributing agent representing a manufacturer or an  
 12 importer, or dealer holding a valid, current permit pursuant  
 13 to s. 210.15 shall first file with the division a notice of  
 14 such shipment. This paragraph shall not apply to any common or  
 15 contract carrier that is transporting cigarettes through this  
 16 state to another location outside this state under a proper  
 17 bill of lading or freight bill that states the quantity,  
 18 source, and destination of such cigarettes or to cigarettes  
 19 shipped or otherwise transported pursuant to s. 210.04(9).

20           (c) In any case in which the division or its duly  
 21 authorized agent, or any law enforcement officer of this  
 22 state, has knowledge or reasonable grounds to believe that any  
 23 vehicle is transporting cigarettes in violation of this part,  
 24 the division, such agent, or such law enforcement officer is  
 25 authorized to stop such vehicle and inspect the vehicle for  
 26 contraband cigarettes.

27           (2) The division is authorized to prescribe and  
 28 promulgate by rules and regulations, which shall have the  
 29 force and effect of the law, such records to be kept and  
 30 reports to be made to the division by any manufacturer,  
 31 importer, distributing agent, wholesale dealer, retail dealer,

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1 common carrier, or any other person handling, transporting or  
2 possessing cigarettes for sale or distribution within the  
3 state as may be necessary to collect and properly distribute  
4 the taxes imposed by s. 210.02. All reports shall be made on  
5 or before the 10th day of the month following the month for  
6 which the report is made, unless the division by rule or  
7 regulation shall prescribe that reports be made more often.

8 (3) All manufacturers, importers, distributing agents,  
9 wholesale dealers, agents, or retail dealers shall maintain  
10 and keep for a period of 3 years at the place of business  
11 where any transaction takes place, such records of cigarettes  
12 received, sold, or delivered within the state as may be  
13 required by the division. The division or its duly authorized  
14 representative is hereby authorized to examine the books,  
15 papers, invoices, and other records, the stock of cigarettes  
16 in and upon any premises where the same are placed, stored,  
17 and sold, and the equipment of any such manufacturers,  
18 importers, distributing agents, wholesale dealers, agents, or  
19 retail dealers, pertaining to the sale and delivery of  
20 cigarettes taxable under this part. To verify the accuracy of  
21 the tax imposed and assessed by this part, each person is  
22 hereby directed and required to give to the division or its  
23 duly authorized representatives the means, facilities, and  
24 opportunity for such examinations as are herein provided for  
25 and required.

26 (4)(a) All persons who are either cigarette  
27 manufacturers, importers, wholesalers, ~~vending machine~~  
28 ~~operators~~ or distributing agents, and agents and employees of  
29 the same, are required to keep daily sales tickets or invoices  
30 of cigarette sales and it shall be the duty of said persons to  
31 see that each sales ticket and invoice handled by them or on

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1 behalf of them show the correct name and address to whom sold  
2 and the number of packages or cartons of each brand sold. It  
3 shall also be the duty of said persons to see that each sales  
4 ticket or invoice correctly shows whether the same is inside  
5 or outside of a qualified municipality and if the sale is made  
6 within the limits of a qualified municipality, the correct  
7 name of the municipality must be indicated.

8           Section 7. Subsection (1) of section 210.12, Florida  
9 Statutes, is amended, subsections (2) through (6) of said  
10 section are renumbered as subsections (4) through (8),  
11 respectively, and new subsections (2) and (3) are added to  
12 said section, to read:

13           210.12 Seizures; forfeiture proceedings.--

14           (1) The state, acting by and through the division,  
15 shall be authorized and empowered to seize, confiscate, and  
16 forfeit ~~for the use and benefit of the state,~~ any cigarettes  
17 upon which taxes payable hereunder may be unpaid or that are  
18 otherwise held in violation of the requirements of this  
19 chapter, and also any vending machine or receptacle in which  
20 ~~such~~ cigarettes upon which taxes have not been paid are held  
21 for sale, or any vending machine that does not have affixed  
22 thereto the identification sticker required by the provisions  
23 of s. 210.07, or which does not display at all times at least  
24 one package of each brand of cigarettes located therein so the  
25 same is clearly visible and arranged in such a manner that the  
26 cigarette tax stamp or meter impression of the stamp affixed  
27 thereto is clearly visible. Such seizure may be made by the  
28 division, its duly authorized representative, any sheriff or  
29 deputy sheriff, or any police officer.

30           (2) All fixtures, equipment, and other materials and  
31 personal property on the premises of any dealer, retail



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1 dealer, or distributing agent who, with intent to defraud the  
 2 state, fails to keep or make any record, return, report, or  
 3 inventory required by this part; keeps or makes any false or  
 4 fraudulent record, return, report, or inventory required by  
 5 this part; refuses to pay any tax imposed by this part; or  
 6 attempts in any manner to evade or defeat the requirements of  
 7 this part shall be forfeited to the state.

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

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

12 210.15 Permits.--

13 (1)(a) Every person, firm, or corporation desiring to  
 14 engage in business as a manufacturer, importer, exporter,  
 15 distributing agent, or wholesale dealer of cigarettes ~~deal in~~  
 16 ~~cigarettes as a distributing agent, wholesale dealer, or~~  
 17 ~~exporter~~ within this state shall file with the division an  
 18 application for a cigarette permit for each place of business  
 19 located within this state or, in the absence of such place of  
 20 business in this state, for wherever its principal place of  
 21 business is located ~~with the Division of Alcoholic Beverages~~  
 22 ~~and Tobacco.~~ Every application for a cigarette permit shall be  
 23 made on forms furnished by the division and shall set forth  
 24 the name under which the applicant transacts or intends to  
 25 transact business, the location of the applicant's place of  
 26 business within the state, if any, and such other information  
 27 as the division may require. If the applicant has or intends  
 28 to have more than one place of business dealing in cigarettes  
 29 within this state, the application shall state the location of  
 30 each place of business. If the applicant is an association,  
 31 the application shall set forth the names and addresses of the

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1 persons constituting the association, and if a corporation,  
 2 the names and addresses of the principal officers thereof and  
 3 any other information prescribed by the division for the  
 4 purpose of identification. The application shall be signed and  
 5 verified by oath or affirmation by the owner, if a natural  
 6 person, and in the case of an association or partnership,  
 7 members or partners thereof, and in the case of a corporation,  
 8 by an executive officer thereof or by any person specifically  
 9 authorized by the corporation to sign the application, to  
 10 which shall be attached the written evidence of this  
 11 authority. ~~The cigarette permit for a distributing agent shall~~  
 12 ~~be issued annually for which an annual fee of \$5 shall be~~  
 13 ~~charged.~~

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

19 ~~(b)(c) Permits The permit for a distributing agent,~~  
 20 ~~wholesale dealer, or exporter shall be issued only to persons~~  
 21 ~~of good moral character, who are not less than 18 years of~~  
 22 ~~age. Distributing agent, wholesale dealer, or exporter Permits~~  
 23 ~~to corporations shall be issued only to corporations whose~~  
 24 ~~officers are of good moral character and not less than 18~~  
 25 ~~years of age. There shall be no exemptions from the permit~~  
 26 ~~fees herein provided to any persons, association of persons,~~  
 27 ~~or corporation, any law to the contrary notwithstanding.~~

28 ~~(c) No distributing agent, wholesale dealer, or~~  
 29 ~~exporter permit under this part or chapter 569 shall be~~  
 30 ~~issued, maintained, or renewed if the applicant, its officers,~~  
 31 ~~or any person or persons owning directly or indirectly, in the~~

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1 aggregate, more than 10 percent of the ownership interests in  
2 the applicant:

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

5 2. Had a permit revoked by the division within the  
6 previous 2 years;

7 3. Has been convicted of selling stolen or counterfeit  
8 cigarettes, receiving stolen cigarettes, or being involved in  
9 the counterfeiting of cigarettes;

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

20 5. Has imported, or caused to be imported, into the  
21 United States any cigarette in violation of 19 U.S.C. s.  
22 1681a; or

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

28 (d) The division may refuse to issue a ~~distributing~~  
29 ~~agent, wholesale, or exporter~~ permit to any person, firm, or  
30 corporation whose permit under the cigarette law has been  
31 ~~revoked, or to any corporation,~~ an officer of which has had

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1 his or her permit under the cigarette law revoked, or to any  
 2 person who is or has been an officer of a corporation whose  
 3 permit has been revoked under the cigarette law. Any permit  
 4 issued to a firm or corporation prohibited from obtaining such  
 5 permit under the cigarette law may be revoked by the division.

6 (e) Prior to an application for a distributing agent,  
 7 wholesale dealer, or exporter permit being approved, the  
 8 applicant shall file a set of fingerprints on forms provided  
 9 by the division. The applicant shall also file a set of  
 10 fingerprints for any person or persons interested directly or  
 11 indirectly with the applicant in the business for which the  
 12 permit is being sought, when so required by the division. If  
 13 the applicant or any person interested with the applicant,  
 14 either directly or indirectly, in the business for which the  
 15 permit is sought shall be such a person as is within the  
 16 definition of persons to whom a ~~distributing agent, wholesale~~  
 17 ~~dealer, or exporter~~ permit shall be denied, then the  
 18 application may be denied by the division. If the applicant is  
 19 a partnership, all members of the partnership are required to  
 20 file said fingerprints, or if a corporation, all principal  
 21 officers of the corporation are required to file said  
 22 fingerprints. The cigarette permit for a manufacturer,  
 23 importer, distributing agent, wholesale dealer, or exporter  
 24 shall be originally issued at a fee of \$100, which sum is to  
 25 cover the cost of the investigation required before issuing  
 26 such permit.

27 (f) The cigarette permits issued under this section  
 28 ~~permit for a wholesale dealer or exporter~~ shall be renewed  
 29 from year to year ~~as a matter of course,~~ at an annual cost of  
 30 \$100, on or before July 1, upon making application to the  
 31 division and upon payment of the annual renewal fee.

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

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

30           Section 9. Section 210.16, Florida Statutes, is  
31 amended to read:

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1           210.16 Revocation or suspension of permit.--

2           (1) The Division of Alcoholic Beverages and Tobacco is  
3 given full power and authority to revoke the permit of any  
4 person ~~wholesale dealer~~ receiving a permit to engage in  
5 business under this part or chapter 569 for violation of any  
6 of the provisions of this part or chapter 569.

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

11           ~~(3)(2)~~ The division may suspend for a reasonable  
12 period of time or revoke, in its discretion, the permits ~~of~~  
13 ~~wholesale dealers~~ issued under the provisions of this part or  
14 chapter 569 to any person who has violated any other provision  
15 of this part or chapter 569 for the same causes and under the  
16 ~~same limitations as is authorized hereunder to revoke the~~  
17 ~~permits of such wholesale dealers.~~

18           ~~(4)(3)~~ No person ~~wholesale dealer~~ whose permit for any  
19 place of business has been revoked shall engage in business  
20 under this part or chapter 569 at such place of business after  
21 such revocation until a new permit is issued. No person  
22 ~~wholesale dealer~~ whose permit for any place of business has  
23 been revoked shall be permitted to have said permit renewed,  
24 or to obtain an additional cigarette permit for any other  
25 place of business, for a period of 2 years ~~6 months~~ after the  
26 date such revocation becomes final.

27           ~~(5)(4)~~ In addition to lieu ~~of~~ the suspension or  
28 revocation of permits, the division may impose civil penalties  
29 against holders of permits for violations of this part or  
30 rules and regulations relating thereto. No civil penalty so  
31 imposed shall exceed ~~\$2,500~~ \$1,000 for each offense, and all

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1 amounts collected shall be deposited with the Chief Financial  
 2 Officer to the credit of the General Revenue Fund. If the  
 3 holder of the permit fails to pay the civil penalty, his or  
 4 her permit shall be suspended for such period of time as the  
 5 division may specify.

6 Section 10. Subsections (2),(3), and (7) of section  
 7 210.18, Florida Statutes, are amended, and subsection (9) is  
 8 added to said section, to read:

9 210.18 Penalties for tax evasion; reports by  
 10 sheriffs.--

11 (2) Except as otherwise provided in this section, any  
 12 person ~~wholesale or retail dealer~~ who fails, neglects, or  
 13 refuses to comply with, or violates the provisions of, this  
 14 part or the rules adopted ~~and regulations promulgated~~ by the  
 15 division under this part commits ~~is guilty of~~ a misdemeanor of  
 16 the first degree, punishable as provided in s. 775.082 or s.  
 17 775.083. Any person ~~wholesale or retail dealer~~ who has been  
 18 convicted of a violation of any provision of the cigarette tax  
 19 law and who is thereafter convicted of a further violation of  
 20 the cigarette tax law commits is, upon conviction of such  
 21 further offense, ~~guilty of~~ a felony of the third degree,  
 22 punishable as provided in s. 775.082, s. 775.083, or s.  
 23 775.084.

24 (3) Any person who falsely or fraudulently makes,  
 25 forges, alters, or counterfeits any stamp or impression die  
 26 used in meter machines prescribed by the division under the  
 27 provisions of this part; or, with intent to evade taxes, jams,  
 28 tampers with, or alters such a machine; or causes or procures  
 29 to be falsely or fraudulently made, forged, altered, or  
 30 counterfeited any such stamp or die; or knowingly and  
 31 willfully utters, purchases, passes or tenders as true any

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1 such false, altered, or counterfeited stamp or die impression;  
 2 or, with the intent to defraud the state, fails to comply with  
 3 any other requirement of this chapter commits ~~is guilty of a~~  
 4 felony of the third degree, punishable as provided in s.  
 5 775.082, s. 775.083, or s. 775.084.

6 (7) Any sheriff, deputy sheriff, ~~or~~ police officer, or  
 7 state law enforcement officer, upon the seizure of any  
 8 unstamped cigarettes under this section, shall promptly report  
 9 such seizure to the division or its representative, together  
 10 with a description of all such unstamped cigarettes seized, so  
 11 that the state may be kept informed as to the size and  
 12 magnitude of the illicit cigarette business. The division  
 13 shall keep records showing the number of seizures and seized  
 14 cigarettes reported to, or seized by, the division.

15 (9) Notwithstanding any other provision of law, the  
 16 sale or possession for sale of counterfeit cigarettes by any  
 17 person or by a manufacturer, importer, distributing agent,  
 18 wholesale dealer, or retail dealer shall result in the seizure  
 19 of the product and related machinery by the division or any  
 20 law enforcement agency and may be punishable as follows:

21 (a)1. A first violation with a total quantity of less  
 22 than two cartons of cigarettes or the equivalent amount of  
 23 other cigarettes by a person who does not hold a permit or who  
 24 holds a retail permit pursuant to this part and 10 cartons or  
 25 the equivalent amount of other cigarettes by the holder of any  
 26 other type of permit may be punishable by a fine not to exceed  
 27 \$1,000 or five times the retail value of the cigarettes  
 28 involved, whichever is greater, or imprisonment not to exceed  
 29 5 years, or both.

30 2. A subsequent violation with a total quantity of  
 31 less than two cartons of cigarettes or the equivalent amount



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1 of other cigarettes by a person who does not hold a permit or  
 2 who holds a retail permit pursuant to this part and 10 cartons  
 3 or the equivalent amount of other cigarettes by the holder of  
 4 any other type of permit may be punishable by a fine not to  
 5 exceed \$5,000 or five times the retail value of the cigarettes  
 6 involved, whichever is greater, or imprisonment not to exceed  
 7 5 years, or both, and shall also result in the revocation by  
 8 the division of the permit of the manufacturer, importer,  
 9 distributing agent, wholesale dealer, or retail dealer.

10 (b)1. A first violation with a total quantity of two  
 11 or more cartons of cigarettes or the equivalent amount of  
 12 other cigarettes by a person who does not hold a permit or  
 13 who holds a retail permit pursuant to this part and 10 cartons  
 14 or the equivalent amount of other cigarettes by the holder of  
 15 any other type of permit may be punishable by a fine not to  
 16 exceed \$2,000 or five times the retail value of the cigarettes  
 17 involved, whichever is greater, or imprisonment not to exceed  
 18 5 years, or both.

19 2. A subsequent violation with a quantity of two  
 20 cartons of cigarettes or more or the equivalent amount of  
 21 other cigarettes by a person who does not hold a permit or  
 22 who holds a retail permit pursuant to this part and 10 cartons  
 23 or the equivalent amount of other cigarettes by the holder of  
 24 any other type of permit may be punishable by a fine not to  
 25 exceed \$50,000 or five times the retail value of the  
 26 cigarettes involved, whichever is greater, or imprisonment not  
 27 to exceed 5 years, or both, and shall also result in the  
 28 revocation by the division of the permit of the manufacturer,  
 29 importer, distributing agent, wholesale dealer, or retail  
 30 dealer.

31 For purposes of this subsection, any counterfeit

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1 cigarettes seized by the division shall be destroyed.

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

4 210.181 Civil penalties.--

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

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

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

21 772.102 Definitions.--As used in this chapter, the  
22 term:

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

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

28 1. Section 210.18, relating to evasion of payment of  
29 cigarette taxes.

30 2. Section 414.39, relating to public assistance  
31 fraud.

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1 3. Section 440.105 or s. 440.106, relating to workers'  
2 compensation.

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

4 5. Chapter 517, relating to securities transactions.

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

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

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

10 9. Chapter 562, relating to beverage law enforcement.

11 10. Section 624.401, relating to transacting insurance  
12 without a certificate of authority, s. 624.437(4)(c)1.,  
13 relating to operating an unauthorized multiple-employer  
14 welfare arrangement, or s. 626.902(1)(b), relating to  
15 representing or aiding an unauthorized insurer.

16 11. Chapter 687, relating to interest and usurious  
17 practices.

18 12. Section 721.08, s. 721.09, or s. 721.13, relating  
19 to real estate timeshare plans.

20 13. Chapter 782, relating to homicide.

21 14. Chapter 784, relating to assault and battery.

22 15. Chapter 787, relating to kidnapping.

23 16. Chapter 790, relating to weapons and firearms.

24 17. Section 796.03, s. 796.04, s. 796.05, or s.  
25 796.07, relating to prostitution.

26 18. Chapter 806, relating to arson.

27 19. Section 810.02(2)(c), relating to specified  
28 burglary of a dwelling or structure.

29 20. Chapter 812, relating to theft, robbery, and  
30 related crimes.

31 21. Chapter 815, relating to computer-related crimes.

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1           22. Chapter 817, relating to fraudulent practices,  
2 false pretenses, fraud generally, and credit card crimes.

3           23. Section 827.071, relating to commercial sexual  
4 exploitation of children.

5           24. Chapter 831, relating to forgery and  
6 counterfeiting.

7           25. Chapter 832, relating to issuance of worthless  
8 checks and drafts.

9           26. Section 836.05, relating to extortion.

10          27. Chapter 837, relating to perjury.

11          28. Chapter 838, relating to bribery and misuse of  
12 public office.

13          29. Chapter 843, relating to obstruction of justice.

14          30. Section 847.011, s. 847.012, s. 847.013, s.  
15 847.06, or s. 847.07, relating to obscene literature and  
16 profanity.

17          31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,  
18 or s. 849.25, relating to gambling.

19          32. Chapter 893, relating to drug abuse prevention and  
20 control.

21          33. Section 914.22 or s. 914.23, relating to  
22 witnesses, victims, or informants.

23          34. Section 918.12 or s. 918.13, relating to tampering  
24 with jurors and evidence.

25           Section 13. For the purpose of incorporating the  
26 amendment to section 210.18, Florida Statutes, in a reference  
27 thereto, paragraph (a) of subsection (1) of section 895.02,  
28 Florida Statutes, is reenacted to read:

29           895.02 Definitions.--As used in ss. 895.01-895.08, the  
30 term:

31           (1) "Racketeering activity" means to commit, to

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1 attempt to commit, to conspire to commit, or to solicit,  
2 coerce, or intimidate another person to commit:

3 (a) Any crime which is chargeable by indictment or  
4 information under the following provisions of the Florida  
5 Statutes:

6 1. Section 210.18, relating to evasion of payment of  
7 cigarette taxes.

8 2. Section 403.727(3)(b), relating to environmental  
9 control.

10 3. Section 409.920 or s. 409.9201, relating to  
11 Medicaid fraud.

12 4. Section 414.39, relating to public assistance  
13 fraud.

14 5. Section 440.105 or s. 440.106, relating to workers'  
15 compensation.

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

18 7. Sections 499.0051, 499.0052, 499.00535, 499.00545,  
19 and 499.0691, relating to crimes involving contraband and  
20 adulterated drugs.

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

22 9. Chapter 517, relating to sale of securities and  
23 investor protection.

24 10. Section 550.235, s. 550.3551, or s. 550.3605,  
25 relating to dogracing and horseracing.

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

27 12. Chapter 552, relating to the manufacture,  
28 distribution, and use of explosives.

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

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

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

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

8           17. Chapter 687, relating to interest and usurious  
 9 practices.

10           18. Section 721.08, s. 721.09, or s. 721.13, relating  
 11 to real estate timeshare plans.

12           19. Chapter 782, relating to homicide.

13           20. Chapter 784, relating to assault and battery.

14           21. Chapter 787, relating to kidnapping.

15           22. Chapter 790, relating to weapons and firearms.

16           23. Section 796.03, s. 796.035, s. 796.04, s. 796.045,  
 17 s. 796.05, or s. 796.07, relating to prostitution and sex  
 18 trafficking.

19           24. Chapter 806, relating to arson.

20           25. Section 810.02(2)(c), relating to specified  
 21 burglary of a dwelling or structure.

22           26. Chapter 812, relating to theft, robbery, and  
 23 related crimes.

24           27. Chapter 815, relating to computer-related crimes.

25           28. Chapter 817, relating to fraudulent practices,  
 26 false pretenses, fraud generally, and credit card crimes.

27           29. Chapter 825, relating to abuse, neglect, or  
 28 exploitation of an elderly person or disabled adult.

29           30. Section 827.071, relating to commercial sexual  
 30 exploitation of children.

31           31. Chapter 831, relating to forgery and

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1 counterfeiting.

2 32. Chapter 832, relating to issuance of worthless  
3 checks and drafts.

4 33. Section 836.05, relating to extortion.

5 34. Chapter 837, relating to perjury.

6 35. Chapter 838, relating to bribery and misuse of  
7 public office.

8 36. Chapter 843, relating to obstruction of justice.

9 37. Section 847.011, s. 847.012, s. 847.013, s.  
10 847.06, or s. 847.07, relating to obscene literature and  
11 profanity.

12 38. Section 849.09, s. 849.14, s. 849.15, s. 849.23,  
13 or s. 849.25, relating to gambling.

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

15 40. Chapter 893, relating to drug abuse prevention and  
16 control.

17 41. Chapter 896, relating to offenses related to  
18 financial transactions.

19 42. Sections 914.22 and 914.23, relating to tampering  
20 with a witness, victim, or informant, and retaliation against  
21 a witness, victim, or informant.

22 43. Sections 918.12 and 918.13, relating to tampering  
23 with jurors and evidence.

24 Section 14. This act shall take effect October 1,  
25 2005.

26

27

28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31

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1 and insert:

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



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1 unstamped cigarette packages; authorizing  
2 certain law enforcement officials to inspect  
3 certain shipping vehicles; providing for  
4 application to and records requirements of  
5 manufacturers and importers; amending s.  
6 210.12, F.S.; authorizing the state to claim  
7 certain property and materials from certain  
8 dealers and retailers who attempt to defraud  
9 the state; authorizing the destruction of  
10 certain cigarettes; amending s. 210.15, F.S.;  
11 providing criteria for permit application;  
12 prohibiting issuance, maintenance, or renewal  
13 of certain permits for certain applicants;  
14 providing guidelines for permit application  
15 denial; amending s. 210.16, F.S.; revising the  
16 authority of the Division of Alcoholic  
17 Beverages and Tobacco to revoke or suspend the  
18 permits of certain persons under certain  
19 circumstances; revising a penalty period for  
20 revoked permits; increasing a civil penalty;  
21 amending s. 210.18, F.S.; expanding the group  
22 of violators subject to criminal liability;  
23 prohibiting the sale or possession for sale of  
24 counterfeit cigarettes; providing penalties;  
25 requiring that the seizure of unstamped  
26 cigarettes be reported to the division;  
27 requiring the division to keep records  
28 concerning seized unstamped cigarettes;  
29 creating s. 210.181, F.S.; providing civil  
30 penalties for failure to comply with certain  
31 duties or pay certain taxes; reenacting ss.

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1 772.102(1)(a) and 895.02(1)(a), F.S., relating  
2 to crimes constituting a "criminal activity"  
3 and definitions as used in the Florida RICO  
4 Act, to incorporate the amendment to s. 210.18,  
5 F.S., in references thereto; providing an  
6 effective date.

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