

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/SB 816

SPONSOR: Regulated Industries Committee and Senators Haridopolos and Dockery

SUBJECT: Contraband and Counterfeit Cigarettes and Collection of Existing Taxes

DATE: March 20, 2005      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.	Cellon	Cannon	CJ	<b>Fav/4 amendments</b>
3.	Keating	Johansen	GE	<b>Favorable</b>
4.			GA	
5.				
6.				

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill requires manufacturers and importers of cigarettes to obtain a permit from the state's Division of Alcoholic Beverages and Tobacco (division), within the Department of Business and Professional Regulation (DBPR or department). A separate permit would be required for each place of business in Florida of a manufacturer, importer, exporter, distributing agent, and wholesaler. It amends the definition of wholesale dealer and retail dealer. It provides new definitions for stamps, importer, manufacturer, and counterfeit cigarettes.

The bill requires that all persons shipping unstamped cigarettes into the state must file a notice of shipment with the division, unless the cigarettes are shipped to a wholesale dealer or importer holding a current, valid permit. The bill requires wholesale dealers in Florida to affix tax stamps to cigarette packages within 10 days after receipt of the cigarettes and requires out-of-state dealers to affix the stamps before making a shipment of the cigarettes into Florida.

The bill requires that a manufacturer, importer, or distributing agent representing a manufacturer or importer may only sell or distribute cigarettes to licensed wholesale dealers and importers. It provides that a distributing agent may only accept cigarettes from a manufacturer or importer with a valid, current permit for transfer to a dealer with a valid current permit, and prohibits a distributing agent from owning or selling cigarettes.

The bill limits a wholesale dealer to obtaining cigarettes from a manufacturer, importer, distributing agent, or dealer with a valid, current permit, and limits a wholesale dealer to selling or distributing cigarettes only to other wholesalers or to retail dealers with a valid, current permit. It also limits retailers from receiving cigarettes only from a wholesale dealer with a valid, current permit. The bill prohibits any person from possessing unstamped cigarettes, except under certain circumstances, and requires that wholesale dealers store unstamped cigarettes separately from stamped cigarettes. The bill extends the division's authority to seize and forfeit cigarettes without tax stamps, and permits the division, under certain circumstances, to seize and forfeit the fixtures, equipment, and other personal property of a wholesale dealer or retail dealer violating the cigarette tax laws, and requires that the division destroy the confiscated cigarettes.

The bill allows the division or any law enforcement officer to stop and search a vehicle for contraband cigarettes if reasonable cause exists to believe that the vehicle is illegally transporting cigarettes. The bill also enhances and broadens the application of criminal penalties for violations of the cigarette tax law and authorizes additional civil penalties. The bill requires that state law enforcement officers report the seizure of unstamped cigarettes to the division. It requires that the division maintain records of the number of seizures and number of seized cigarettes.

The bill requires that a dealer or agent must remit the cigarette taxes imposed by ch. 210, F.S., by certified check or electronic funds transfer during the dealer or agent's initial period of licensure or appointment, but not to exceed 12 months. The bill authorizes the division to adopt rules to administer this provision. The bill sets the amount for the surety bond, certificate of deposit, or revocable letter of credit that must be filed with the division for payment of taxes at 110 percent of the estimated tax liability for 30 days, but not less than \$2000.

This bill substantially amends sections 210.01, 210.021, 210.06, 210.08, 210.09, 210.12, 210.15, 210.16, and 210.18, Florida Statutes.

This bill creates sections 210.085 and 210.181, Florida Statutes.

This bill reenacts sections 772.102 and 895.02, Florida Statutes.

## **II. Present Situation:**

Federal law requires a permit before engaging in business as a manufacturer or importer of tobacco products, or as an export warehouse proprietor.<sup>1</sup>

The division is the agency authorized to enforce the provisions of ch. 569, F.S., relating to the regulation of tobacco products, and ch. 210, F.S., relating to the taxation of tobacco products, including cigarettes. Part I of ch. 210, F.S., which includes ss. 210.01-210.22, F.S., concerns the taxation of cigarettes, and part II of ch. 210, F.S., which includes ss. 210.25-210.75, F.S., concerns the taxation of tobacco products other than cigarettes or cigars.

### **Definitions**

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<sup>1</sup> 26 U.S.C. s. 5712

Section 210.01(1), F.S., defines a “cigarette” as:

[A]ny roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Sections 210.01(5) and (6), F.S., define a “dealer” and a “wholesale dealer” as:

[A]ny person 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.

A “distributing agent” is any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state.<sup>2</sup> An “agent” is any person authorized by the division to purchase and affix adhesive or meter stamps under part I of ch. 510, F.S.<sup>3</sup> A “wholesale dealer” 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.<sup>4</sup> An “exporter” is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.<sup>5</sup>

Section 210.25(5), F.S., defines “manufacturer” as “any person who manufactures and sells tobacco products.” As the term is used in part II of ch. 210, F.S., the term manufacturer does not include a manufacturer of cigarettes or cigars. Therefore, the term cigarette manufacturer is not defined in the Florida Statutes.

Section 210.15, F.S., requires every person, firm, or corporation desiring to deal in cigarettes in Florida as a distributing agent, wholesale dealer, or exporter to apply for a cigarette permit.

### **Cigarette Excise Tax**

The division oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Section 210.15, F.S., requires that every person, firm or corporation desiring to deal in cigarettes in Florida as a distributing agent, wholesale dealer, or exporter must apply for a cigarette permit. The current excise tax in Florida ranges from 16.9 cents per package to 67.8 cents per package, depending on the number of cigarettes per package.<sup>6</sup> The current excise tax is 33.9 cents per standard 20-cigarette pack.<sup>7</sup>

Section 210.06, F.S., requires that every wholesale dealer, which is at times referred to as a stamping agent, affix a tax stamp as evidence that the excise tax has been paid before the

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<sup>2</sup> Section 210.01(14), F.S.

<sup>3</sup> Section 210.01(9), F.S.

<sup>4</sup> Section 210.01(6), F.S.

<sup>5</sup> Section 210.01(17), F.S.

<sup>6</sup> See ss. 210.02(3) and (4), F.S.

<sup>7</sup> Section 210.02(3)(b), F.S.

cigarettes can be offered for sale in this state. Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid by the wholesale dealer upon the first sale or transaction inside the state whether or not such sale or transfer is to the ultimate purchaser or consumer. Because wholesaler dealers may purchase cigarettes from other wholesaler dealers, only the first sale is taxed. Distributing agents, acting as agents of the manufacturers, are not required to pay taxes for the distribution of cigarettes to wholesale dealers.

Collected excise taxes are paid to the division. Stamps representing various denominations of tax are purchased in bulk by the stamping agents and are affixed to packages as proof of payment. Cigarettes that are not properly stamped may not be sold in Florida. The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer. In fiscal year 2003-04, \$418.7 million was collected in cigarette excise taxes.<sup>8</sup>

### **Permit Requirements**

Section 569.003, F.S., requires a retail tobacco products dealer permit for the retail sale of tobacco products within this state. The same permit is required to allow a tobacco products vending machine to be located on the premises. A retail tobacco products dealer permit is required for each place of business where tobacco products are sold.

A manufacturer of tobacco products, including cigarettes, is not required to have a permit or license under Florida law. Section 210.15, F.S., requires a cigarette permit for each place of business of every person, firm, or corporation desiring to sell, store, or deal in cigarettes as a distributing agent, wholesale dealer, or exporter. Section 210.35(1), F.S., requires a distributor's license for any person engaged in the business of selling or dealing in tobacco products, not including cigarettes or cigars, as a distributor. A permit is also required by a person outside this state who ships or transports tobacco products, not including cigarettes or cigars, to retailers in this state, to be sold by retailers. According to the department, there are over 430 cigarette wholesale dealers permitted to distribute cigarettes in Florida.

### **Recordkeeping Requirements**

Section 210.09(3), F.S., requires that all distributing agents, wholesale dealers, agents, and retail dealers maintain and keep for three years, at the place of business where the transaction takes place, records of cigarettes received, sold, or delivered within the state. The division is also authorized to examine their records to verify compliance. Section 210.09(4), F.S., also requires that cigarette wholesale dealers and distributing agents, including their agents and employees, keep sales tickets and invoices of cigarettes sales that show the correct name and address to whom sold and the number of packages or cartons of each brand sold.

### **Contraband Cigarettes**

A recent U.S. Government Accountability Office (GAO) report found a link between international terrorist groups and the illicit trafficking in contraband cigarettes and counterfeit cigarette tax stamps.<sup>9</sup> According to the GAO report, law enforcement officials have determined that international terrorist groups use cigarette trafficking to raise funds. The extent of the

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<sup>8</sup> 2005 Tax Handbook

<sup>9</sup> *Terrorist Financing: U.S. Agencies Should Systematically Access Terrorists' Use of Alternative Financing Mechanisms*, U.S. General Accounting Office, GAO-04-163, November 2003.

contraband cigarette problem is unknown principally because of the illegal nature of the conduct, however, federal seizures of contraband cigarettes have increased dramatically in recent years from 12 seizures in 1998 to 191 seizures in 2003.<sup>10</sup>

The scope of counterfeit or untaxed cigarette sales in Florida is also unknown. The Florida Department of Law Enforcement (FDLE) and the division do not maintain records of counterfeit cigarette seizures or related arrests. Section 210.18(7), F.S., requires sheriffs, deputy sheriffs, and police officers to report to the division the seizure of any unstamped cigarettes in order that the state may be kept informed as to the size and magnitude of the illicit cigarette business. According to the DBPR, the department is not aware of any local enforcement cigarette seizures without the division's agents in attendance. The department asserts that its district offices maintain contact with the local law enforcement officials and work in unison in any activities involving either alcoholic beverages or tobacco products. Accordingly, no reports of any seizures without division involvement have been reported to the division pursuant to s. 210.18(7), F.S. The division has not kept records of seizures.

In addition to local law enforcement and the division, Department of Transportation (DOT) highway inspectors are a potential source of information regarding cigarette seizures. The DOT has had no contraband cigarette seizures because its motor carrier compliance officers, who are certified law enforcement officers, were not trained in the identification of contraband and unstamped cigarettes. However, in October 2004, the DOT began to train its officers regarding counterfeit and unstamped cigarettes. To date, the DOT has not interdicted or seized any contraband or counterfeit cigarettes.

The division's enforcement staff perceives that this is a prevalent problem in the state. The division states that, through their work with the Federal government, several million packs of cigarettes have been seized in the past five years. The division advises that although the total amount of counterfeit cigarettes entering the state is unknown, it believes that the number is growing.

### **Bond Requirements**

Persons must obtain a stamping agent permit in order to obtain cigarette tax stamps. When tax stamps are purchased, the division anticipates a tax report the next month, and actively pursues any permitted cigarette wholesale dealer who does not file a report. According to the division and industry representatives, there is a growing problem in Florida with persons who apply for a wholesale dealer license and avoid paying taxes. These persons evade the excise taxes by purchasing the tax stamps with bank drafts that are subsequently returned for insufficient funds. These licensees then close their business before reporting and paying the taxes to the division.

According to the division, many of these operations involve cigarette brands not commonly recognized that are either purchased from unlicensed entities through customs or from small manufacturers who do not report to the state on a monthly basis. These cigarette brands are commonly referred to as private brands and as fourth-tier cigarettes. Florida law does not require manufacturers or importers to report to the division information regarding cigarettes sold from

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<sup>10</sup> *Cigarette Smuggling; Federal Law Enforcement Efforts and Seizure Increasing*, U.S. General Accounting Office GAO-04-641, May 2004.

out-of-state to stamping agents, but most report this information voluntarily. However, according to the division, many do not report.

Stamping agents may purchase cigarette tax stamps by check or credit. For example, a typical roll of tax stamps costs over \$10,000. If a payment is made by check, and there are insufficient funds to cover the amount of the check, the bad check may not be identified for several weeks or months. During this time the stamping agent could amass a high bill for unpaid taxes. A credit payment could ultimately not be paid or also made with a bad check. Therefore, the taxes may not be collected before the stamping agent goes out of business.

Stamping agents must obtain a surety bond to cover the taxes, but the required bond does not cover the cost of a typical purchase of tax stamps. Section 210.08, F.S., requires a \$10,000 bond as surety for payment of all taxes. Section 210.08, F.S., authorizes the division to accept a bond that is not less than \$1,000, and prohibits the division to require a bond greater than \$10,000. The \$10,000 bond limit and \$1,000 bond minimum have been in effect since 1945, when the excise tax on cigarettes was two cents.<sup>11</sup> As noted above, the excise tax is currently 33.9 cents per 20-cigarette pack. This surety limitation applies to cash payments, which includes payments made by check or bank draft.

A stamping agent may purchase tax stamps in excess of \$10,000 but is only required to purchase a bond of \$10,000. According to the division, individual tax stamp purchases in excess of \$10,000 are common, and the typical roll of stamps costs more than \$10,000. Also, according to the division, since the year 2000, the division has received approximately 14 bad checks from 10 stamping agents. After collecting on the bonds, two of the checks remain partially unpaid for a total outstanding amount of \$30,724. This does not include staff time to collect the checks and on the bond.

Section 210.05(3)(b), F.S., sets the amount for the surety bond, certificate of deposit, unconditional guarantee contract, or revocable letter of credit that must be filed with the DABT for payment of taxes made by credit at 110 percent of the estimated tax liability for 30 days, but not less than \$2000. Default on the bond or payments can result in the revocation of the privilege to purchase stamps on credit for a period of up to 12 months at the discretion of the division.

Section 210.021, F.S., permits the division to require a dealer to pay the tax by electronic funds transfer (EFT) if the stamping agent has paid \$50,000 or more in taxes during the previous year. According to the division, requiring all stamping agents to pay by EFT may lessen the non-payment problem because payments made with insufficient funds are less common when made by EFT than with check payments. In addition, the division believes that requiring all new stamping agents to pay by cashiers checks for the first year of operation would establish the stamping agent as a permanent business with a reduced risk of going out of business and disappearing with a large outstanding tax bill.

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<sup>11</sup> See ss. 2 and 6, ch 22645, L.O.F. (1945).

**Interim Project 2005-157**

The Senate President approved interim project no. 2005-157, which reviewed Florida's tobacco settlement and the effect of the nonsettling manufacturers on the state's settlement payments.<sup>12</sup> The purpose of the project was to determine if legislative action is necessary to protect the state's tobacco settlement revenue from diminution or significant loss. In the course of the project, issues related to the cigarette distribution system were addressed, and resulted in the following relevant recommendations:

- The Legislature should amend s. 210.08, F.S., to increase the maximum bond requirement for stamping agents. The maximum bond amount should be sufficient to cover the actual amount of tax stamps purchased. The Legislature should also authorize the division to require all new stamping agents to pay for tax stamps with a certified cashier's check or by EFT for the first year of operation in order establish that the stamping agent is a permanent business. These measures would reduce the risk of tax stamps being purchased with checks for insufficient funds.
- The Legislature should require that the division maintain statistics regarding seizures of counterfeit and contraband cigarettes, and related arrests in order to accurately assess the extent of any law enforcement and tax collection problems.
- The Legislature should amend s. 210.18(7), F.S., to require the Department of Transportation to report to the division the seizure of any unstamped and contraband cigarettes.

**III. Effect of Proposed Changes:**

**Section 1.** The bill amends s. 210.01(6), F.S., to further define the definition of "wholesale dealer" to include a person in or outside this state. It also provides that the term does not include a manufacturer, export warehouse proprietor,<sup>13</sup> or importer who holds a permit under 26 U.S.C. s. 5712, if the person sells or distributes cigarettes in this state to dealers holding valid permits under s. 210.15, F.S, or to an export warehouse proprietor or another manufacturer.

The bill amends the definition of "retail dealer" in s. 210.01(7), F.S., to provide that the term includes a person in or outside this state. It also provides that the term does not apply to any person licensed under s. 569.003, F.S., which relates to retail tobacco dealer permits.

The bill defines the term "counterfeit cigarettes," to mean "cigarettes that have false manufacturing labels, tobacco product packs without tax stamps, or counterfeit tax stamps, or any combination thereof."

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<sup>12</sup> See Committee on Regulated Industries, *Florida Tobacco Settlement and Nonsettling Manufacturers*, report no. 2005-157, November 2004.

<sup>13</sup> The bill does not define the term, "export warehouse proprietor"; however, the Federal Internal Revenue Code, 26 U.S.C. s. 5702(i), specifies that an export warehouse proprietor is a person who operates an export warehouse. The federal code further defines an "export warehouse" as a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States (26 U.S.C. s. 5702(h)).

The bill defines the term “manufacturer” as a domestic person with a valid federal cigarette manufacturer’s permit under 26 U.S.C. 5712 who manufactures, fabricates, assembles, processes, or labels a finished cigarette. The bill defines the term “importer” as a person with a valid federal cigarette importer’s permit under 26 U.S.C. 5712, who imports into the United States, directly or indirectly, a finished cigarette for sale or distribution. The bill also provides a definition for “stamp” or “stamps.”

**Section 2.** The bill amends s. 210.021, F.S., to require that a dealer or agent must remit the cigarette taxes imposed by ch. 210, F.S, by certified check or by electronic funds transfer (EFT) during the dealer or agent’s initial period of licensure or appointment, but not to exceed 12 months. The bill authorizes the division to adopt rules to administer this provision. The bill also authorizes the DBPR to require any dealer to remit any tax imposed under s. 210.02, F.S., by certified check or by EFT.

**Section 3.** The bill amends s. 210.06, F.S., to require wholesale dealers in Florida to affix tax stamps to cigarette packages within 10 days after receipt of the cigarettes and requires out-of-state dealers to affix the stamps before shipment of the cigarettes into Florida. The bill sets forth this requirement in place of the requirement in current law that all wholesale dealers, whether inside or outside of Florida, must affix cigarette tax stamps before the cigarettes are offered for sale or use, consumed, or are otherwise disposed of in Florida.

The bill requires that a tax stamp must be applied to all cigarette packages subject to the cigarette excise tax which are intended for sale to consumers, except as otherwise provided in part II, of ch. 210, F.S. The bill prohibits a cigarette tax stamp from being applied to a cigarette package that is exempt from the federal cigarette excise tax under 26 U.S.C. s. 5704,<sup>14</sup> if the cigarette package is distributed by a manufacturer under federal regulations.

The bill requires that wholesale dealers may apply tax stamps only to cigarettes which possess a valid and current federal cigarette manufacturer’s or importer’s permit under 26 U.S.C. s. 5712. The bill also requires that the wholesaler may only apply the tax stamp to cigarettes received directly from a manufacturer or importer that possess a valid and current federal cigarette manufacturer’s or importer’s permit under 26 U.S.C. s. 5712.

The bill provides that a wholesale dealer may only set aside, without affixing tax stamps, that part of the dealer’s stock which is identified for sale or distribution outside of Florida, and requires that a dealer maintain stocks of unstamped cigarettes separately from stamped packages. The bill also prohibits a wholesale dealer from transferring unstamped cigarette packages to

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<sup>14</sup> 26 U.S.C. s. 5704 provides that cigarettes are exempt from the federal tax if they are:

- consumed or used by a manufacturer’s employees for experimental purposes;
- transferred by a manufacturer or export warehouse proprietor to the bonded premises of another manufacturer or export warehouse proprietor, or for shipment outside of the United States;
- intended for delivery to an export warehouse or manufacturer upon importation into the United States and released from customs custody; or
- returned to the manufacturer upon release from customs, if the cigarettes were previously exported but returned to the United States.

another person or to another facility of the dealer within this state or to another person in this state.

**Section 4.** The bill amends s. 210.08, F.S., to set the amount for the surety bond, certificate of deposit, or revocable letter of credit that must be filed with the division for payment of taxes at 110 percent of the estimated tax liability for 30 days, but not less than \$2000, rather than the current \$10,000 bond.

**Section 5.** The bill creates s. 210.085, F.S., to require that a manufacturer, importer, or distributing agent representing a manufacturer or importer may only sell or distribute cigarettes to licensed wholesale dealers and importers. The bill exempts from this provision transactions under s. 210.04(9), F.S., which permits the distribution by manufacturers of free sample cigarette packages that have not had tax stamps affixed, if the manufacturer pays the applicable tax to the division.

The bill provides that a distributing agent may only accept cigarettes from a manufacturer or importer with a valid, current permit for transfer to a dealer with a valid current permit, and prohibits a distributing agent from owning or selling cigarettes.

The bill limits a wholesale dealer to obtaining cigarettes from a manufacturer, importer, a distributing agent, or dealer with a valid, current permit under s. 210.15., F.S. The bill limits wholesale dealers to selling or distributing cigarettes only to other wholesalers or to retail dealers with a current, valid permit under s. 210.15, F.S., and limits retailers from receiving cigarettes only from a wholesale dealer with a valid, current permit under s. 210.15, F.S.

**Section 6.** The bill amends s. 210.09, F.S., to require persons who ship unstamped cigarettes into this state to file with the division a notice of the shipment. This requirement does not apply if the unstamped cigarettes are shipped to a manufacturer, importer, or dealer holding a valid, current permit under s. 210.15, F.S. The requirement also does not apply to a common or contract carrier that is transporting cigarettes through this state to another state under a proper bill of lading or freight bill that states that quantity, source, and destination of the cigarettes.

The bill authorizes the division, law enforcement, or authorized agents to stop and inspect shipments, and to seize cigarettes, where there is knowledge, or reasonable grounds to believe, that the cigarettes are being transported in violation of part I of ch. 210, F.S.

The bill extends the monthly reporting requirement and the recordkeeping requirements in s. 210.09, F.S., to manufacturers and importers.

**Section 7.** The bill amends s. 210.12, F.S., to authorize the seizure of cigarettes held in violation of the requirements of ch. 210, F.S. Under current law the division is only authorized to seize cigarettes upon which taxes have not been paid.

The bill also provides for the forfeiture to the state of all fixtures, equipment, and other material and personal property on the premises if any dealer or retail dealer, with the intent to commit fraud, violates record keeping or reporting requirements, or otherwise attempts to evade the requirements of part II of ch. 210, F.S. The bill provides that all cigarettes seized, confiscated,

and forfeited to the state must be destroyed. The bill deletes the provision in subsection (1) of s. 210.12, F.S., which provides that forfeited cigarettes may be used for the benefit of the state.

**Section 8.** The bill amends s. 210.15, F.S., to require manufacturers, importers, exporters, distributing agents, and wholesale dealers of cigarettes desiring to engage in business in this state apply to the division for a permit. Current law requires a permit for exporters, distributing agents, and wholesale dealers of cigarettes, but not importers and manufacturers. A separate permit would be required for each place of business located in this state, or the principal place of business if there is no place of business located in this state.

The bill prohibits the issuance, maintenance, or renewal of a permit to any applicant, officer, or any person or persons owning, directly or indirectly, more than 10 percent of the ownership interest, if the applicant:

- has been formally adjudicated as owing \$500 or more in delinquent cigarette taxes;
- has had a permit revoked by the division in the previous two years; or
- has been convicted of violations involving stolen or counterfeit cigarettes;
- has imported or caused to be imported into the United States any cigarettes in violation of 19 U.S.C. 1681a;<sup>15</sup> or
- has imported or caused to be imported into the United States, manufactured for distribution in the United States, any cigarettes with the Federal Cigarette Labeling and Advertising Act in 15 U.S.C. 1331, et seq.

Current law also excludes any person who has been convicted of any offence involving cigarette laws within five years.

The bill amends s. 210.15(1)(e), F.S., to set the cigarettes permit fee for a manufacturer, importer, and distributing agent at \$100, which is the same as the fee in current law for a wholesale dealer or exporter cigarette permit. It also amends s. 210.15, F.S., to delete the \$5 annual permit fee for distributing agents and the automatic annual renewal of the permit upon payment of the annual fee.

**Section 9.** The bill amends s. 210.16, F.S., to authorize the division to revoke or suspend the permit of any person who violates part II of ch. 210, F.S., or ch. 569, F.S. Current law authorizes the suspension or revocation of a wholesaler dealer permit only for violations of part II of ch. 210, F.S. This provision would authorize the division to suspend the permit of a distributing agent, wholesale dealer and exporter, who are required to have a permit pursuant to s. 210.15, F.S.

The bill authorizes the division to impose a civil penalty in addition to suspension or revocation. Current law provides for imposition of the civil penalty in lieu of suspension or revocation. The bill also increases from \$1,000 to \$2,500 the amount of the fine that may be imposed.

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<sup>15</sup> 19 U.S.C. 1681a sets forth requirements for the entry of cigarettes into the United States, including a certification from the manufacturers listing the ingredients in the cigarettes, an imprinted smoking warning on the cigarettes packaging, compliance with Federal Trade Commission importation regulations, and the requirement that the cigarettes bear a United States registered trademark.

**Section 10.** The bill amends s. 210.18, F.S., to provide that any person who fails to comply with any requirement of ch. 210, F.S., with the intent to defraud the state, commits a third degree felony. Current law limits this penalty to wholesale and retail dealers, and does not require intent to defraud the state to establish a violation.

The bill provides for the seizure of counterfeit cigarettes and related machinery. The bill also provides the following penalties for possession of less than two counterfeit cartons of cigarettes, or the equivalent amount of other cigarettes, by a person who does not hold a permit, or a person who holds a retail permit and the violation involves 10 cartons, or the equivalent amount of other cigarettes:

- a fine not to exceed \$1,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both; and
- a subsequent violation results in revocation of the violator's permit and a fine not to exceed \$5,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both.

The following penalties for possession of two or more counterfeit cartons of cigarettes or the equivalent amount of other cigarettes, by a person who does not hold a permit, or a person who holds a retail permit and the violation involves 10 cartons, or the equivalent amount of other cigarettes:

- a fine not to exceed \$2,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both; and
- a subsequent violation results in revocation of the violator's permit and a fine not to exceed \$50,000 or five times the value of the cigarettes, whichever is greater, or imprisonment not to exceed five years, or both.

The bill requires that all counterfeit cigarettes seized by the division must be destroyed.

The bill also amends s. 210.18, F.S., to require state law enforcement officers, in addition to the sheriffs, deputy sheriffs, and police officers, to report the seizure of unstamped cigarettes to the DABT. It requires that the division maintain records of the number of seizures and the number of seized cigarettes.

**Section 11.** The bill creates s. 210.181, F.S., to provide a civil penalty for violations of part II of ch. 210, F.S. The authorized fine is \$1,000 or five times the retail value of the cigarettes involved in the violation, whichever is greater. This civil penalty is limited to persons not holding a cigarette permit, who are subject to the civil penalties provided in s. 210.16(5), F.S. The bill increases from \$1,000 to \$2,500 the civil penalty that may be imposed for a violation by a cigarette permit holder and permits the division to impose the civil penalty in addition to a suspension or revocation of the permit.

The bill also imposes a penalty for failure to pay any tax imposed by part II of ch. 210, F.S., in the amount of five times the unpaid tax due. This penalty would be in addition to any other penalty imposed by part II of ch. 210, F.S.

**Sections 12 and 13.** The bill reenacts ss. 772.102 and 895.02, F.S., for the purpose of incorporating the amendment to s. 210.18, F.S.

**Section 14.** This bill would take effect October 1, 2005.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is suggested that “probable cause” is a standard that would be more in keeping with constitutional standards for a warrantless vehicle search, and that the bill be amended to reflect that standard on page 8, line 16.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The actual amount of taxes being lost due to trafficking in counterfeit and contraband cigarettes is unknown at this time. As a result, the Revenue Estimating Conference estimates that the impact of the bill on cigarette excise tax collections and sales tax collections is indeterminate.

The DBPR estimates that \$7,800 will be raised annually as a result of the new \$100 cigarette permit fee for manufacturers, importers, and distributing agents.

B. Private Sector Impact:

The extent of any private sector costs associated with the reporting requirements of the bill have not been determined.

C. Government Sector Impact:

According to the department, the bill requires four additional positions and related projected costs of \$496,305, \$280,085, and \$284,081 in FY 2005-06, FY 2006-07, and FY 2007-08, respectively.

**VI. Technical Deficiencies:**

Section 7 of the bill creates a new forfeiture provision which will be clarified by a reference to the Florida Contraband Forfeiture Act.

The newly-created criminal offenses in Section 10 of the bill should be designated as third degree felonies with reference to the sentencing statutes.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## VIII. Summary of Amendments:

**Barcode 172880 by Criminal Justice:**

This amendment raises the standard for an officer to stop and search a vehicle believed to be carrying “illegal” cigarettes to “probable cause” from “knowledge or reasonable grounds to believe.”

**Barcode 173240 by Criminal Justice:**

This amendment makes a necessary clarifying reference to the Florida Contraband Forfeiture Act. (WITH TITLE AMENDMENT)

**Barcode 110064 by Criminal Justice:**

This amendment corrects a scrivener’s error by changing the word “chapter” to “part,” thereby eliminating the unintended consequence of treating every criminal offense in the chapter in the same manner.

**Barcode 100770 by Criminal Justice:**

This amendment reorganizes the newly-created offenses of sale or possession with intent to sell contraband cigarettes.

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