

By the Committee on Regulated Industries; and Senators  
Haridopolos and Dockery

580-1695-05

1                                   A bill to be entitled  
2           An act relating to contraband and counterfeit  
3           cigarettes and the collection of existing  
4           taxes; providing additional regulatory and  
5           enforcement measures; amending s. 210.01, F.S.;  
6           revising and providing definitions; amending s.  
7           210.021, F.S.; directing the Secretary of  
8           Business and Professional Regulation to require  
9           certain 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

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.

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.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10           Section 1. Subsections (6) and (7) of section 210.01,  
11 Florida Statutes, are amended, and subsections (19) through  
12 (22) are added to that section, to read:

13           210.01 Definitions.--When used in this part the  
14 following words shall have the meaning herein indicated:

15           (6) "Wholesale dealer" means any person located inside  
16 or outside this state who sells cigarettes to retail dealers  
17 or other persons for purposes of resale only, ~~or any person~~  
18 ~~who operates more than one cigarette vending machine located~~  
19 ~~in more than one place of business.~~ Such term shall not  
20 include any cigarette manufacturer, export warehouse  
21 proprietor, or importer with a valid permit under 26 U.S.C. s.  
22 5712 if such person sells or distributes cigarettes in this  
23 state only to dealers who are agents and who hold valid and  
24 current permits under s. 210.15 or to any cigarette  
25 manufacturer, export warehouse proprietor, or importer who  
26 holds a valid and current permit under 26 U.S.C. s. 5712.

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

31

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

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

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

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

15           Section 2. Section 210.021, Florida Statutes, is  
16 amended to read:

17           210.021 Payment of taxes by certified check or  
18 electronic funds transfer.--

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

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

30           (3) The division shall adopt rules pursuant to ss.  
31 120.536(1) and 120.54 to administer this section.

1           Section 3. Subsection (1) of section 210.06, Florida  
2 Statutes, is amended, and subsection (5) is added to that  
3 section, to read:

4           210.06 Affixation of stamps; presumption.--

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

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

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

21           (c) Dealers may apply stamps only to cigarette  
22 packages received directly from a manufacturer or importer of  
23 cigarettes, or a distributing agent representing a  
24 manufacturer or importer of cigarettes, who possesses a valid  
25 and current permit under this part.

26           (5) Except as provided in s. 210.04(9) or s.  
27 210.09(1), no person, other than a dealer or distributing  
28 agent that receives unstamped cigarette packages directly from  
29 a cigarette manufacturer or importer in accordance with this  
30 section and s. 210.085, shall hold or possess an unstamped  
31 cigarette package. Dealers shall be permitted to set aside,

1 without application of stamps, only such part of the dealer's  
2 stock that is identified for sale or distribution outside this  
3 state. If a dealer maintains stocks of unstamped cigarette  
4 packages, such unstamped packages shall be stored separately  
5 from stamped product packages. No unstamped cigarette packages  
6 shall be transferred by a dealer to another facility of the  
7 dealer within this state or to another person within this  
8 state.

9           Section 4. Section 210.08, Florida Statutes, is  
10 amended to read:

11           210.08 Bond for payment of taxes.--Each dealer, agent,  
12 or distributing agent shall file with the division a surety  
13 bond, certificate of deposit, or irrevocable letter of credit  
14 acceptable to the division in an amount of 110 percent of the  
15 estimated tax liability for 30 days, but not less than \$2,000.  
16 ~~the sum of \$10,000 as surety for the payment of all taxes;~~  
17 ~~provided, however, that where in the discretion of the~~  
18 ~~division the amount of business done by the dealer, agent, or~~  
19 ~~distributing agent is of such volume that a bond, certificate~~  
20 ~~of deposit, or irrevocable letter of credit of less than~~  
21 ~~\$10,000 will be adequate to secure the payment of all taxes~~  
22 ~~assessed as authorized by the cigarette tax law, the division~~  
23 ~~may accept a bond, certificate of deposit, or irrevocable~~  
24 ~~letter of credit in a lesser sum than \$10,000, but in no event~~  
25 ~~shall it accept a bond, certificate of deposit, or irrevocable~~  
26 ~~letter of credit of less than \$1,000, and it may at any time~~  
27 ~~in its discretion require any bond, certificate of deposit, or~~  
28 ~~irrevocable letter of credit in an amount less than \$10,000 to~~  
29 ~~be increased not to exceed \$10,000.~~

30           Section 5. Section 210.085, Florida Statutes, is  
31 created to read:

1           210.085 Transactions only with permitted  
2 manufacturers, importers, distributing agents, dealers, and  
3 retail dealers.--Except as otherwise provided in s. 210.04(9),  
4 a manufacturer or importer, or a distributing agent  
5 representing a manufacturer or importer, may sell or  
6 distribute cigarettes to a person located or doing business  
7 within this state only if such person is a dealer or importer  
8 with a valid, current permit under s. 210.15. A distributing  
9 agent may accept cigarettes from a manufacturer or importer  
10 with a valid, current permit for transfer to a dealer with a  
11 valid, current permit but may not own or sell cigarettes. A  
12 dealer may sell or distribute cigarettes to a person located  
13 or doing business within this state only if such person is a  
14 dealer or retail dealer with a valid, current permit under s.  
15 569.003. A dealer may obtain cigarettes only from a  
16 manufacturer or importer or from a distributing agent or  
17 dealer with a valid, current permit under s. 210.15. A retail  
18 dealer may obtain cigarettes only from a dealer with a valid,  
19 current permit under s. 210.15.

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

23           210.09 Records to be kept; reports to be made;  
24 examination.--

25           (1)(a) Every person who shall possess or transport any  
26 unstamped cigarettes upon the public highways, roads, or  
27 streets of the state, shall be required to have in his or her  
28 actual possession invoices or delivery tickets for such  
29 cigarettes. The absence of such invoices or delivery tickets  
30 shall be prima facie evidence that such person is a dealer in  
31

1 cigarettes in this state and subject to the provisions of this  
2 part.

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

14       **(c) In any case in which the division or its duly**  
15 **authorized agent, or any law enforcement officer of this**  
16 **state, has knowledge or reasonable grounds to believe that any**  
17 **vehicle is transporting cigarettes in violation of this part,**  
18 **the division, such agent, or such law enforcement officer is**  
19 **authorized to stop such vehicle and inspect the vehicle for**  
20 **contraband cigarettes.**

21       (2) The division is authorized to prescribe and  
22 promulgate by rules and regulations, which shall have the  
23 force and effect of the law, such records to be kept and  
24 reports to be made to the division by any manufacturer,  
25 importer, distributing agent, wholesale dealer, retail dealer,  
26 common carrier, or any other person handling, transporting or  
27 possessing cigarettes for sale or distribution within the  
28 state as may be necessary to collect and properly distribute  
29 the taxes imposed by s. 210.02. All reports shall be made on  
30 or before the 10th day of the month following the month for  
31



1 | which the report is made, unless the division by rule or  
2 | regulation shall prescribe that reports be made more often.

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

21 |       (4)(a) All persons who are either cigarette  
22 | manufacturers, importers, wholesalers, ~~vending machine~~  
23 | ~~operators~~ or distributing agents, and agents and employees of  
24 | the same, are required to keep daily sales tickets or invoices  
25 | of cigarette sales and it shall be the duty of said persons to  
26 | see that each sales ticket and invoice handled by them or on  
27 | behalf of them show the correct name and address to whom sold  
28 | and the number of packages or cartons of each brand sold. It  
29 | shall also be the duty of said persons to see that each sales  
30 | ticket or invoice correctly shows whether the same is inside  
31 | or outside of a qualified municipality and if the sale is made

1 within the limits of a qualified municipality, the correct  
2 name of the municipality must be indicated.

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

8 210.12 Seizures; forfeiture proceedings.--

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

25 (2) All fixtures, equipment, and other materials and  
26 personal property on the premises of any dealer, retail  
27 dealer, or distributing agent who, with intent to defraud the  
28 state, fails to keep or make any record, return, report, or  
29 inventory required by this part; keeps or makes any false or  
30 fraudulent record, return, report, or inventory required by  
31 this part; refuses to pay any tax imposed by this part; or

1 attempts in any manner to evade or defeat the requirements of  
2 this part shall be forfeited to the state.

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

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

7 210.15 Permits.--

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

1 person, and in the case of an association or partnership,  
2 members or partners thereof, and in the case of a corporation,  
3 by an executive officer thereof or by any person specifically  
4 authorized by the corporation to sign the application, to  
5 which shall be attached the written evidence of this  
6 authority. ~~The cigarette permit for a distributing agent shall~~  
7 ~~be issued annually for which an annual fee of \$5 shall be~~  
8 ~~charged.~~

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

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

23 ~~(c) No distributing agent, wholesale dealer, or~~  
24 ~~exporter permit under this part or chapter 569 shall be~~  
25 ~~issued, maintained, or renewed if the applicant, its officers,~~  
26 ~~or any person or persons owning directly or indirectly, in the~~  
27 ~~aggregate, more than 10 percent of the ownership interests in~~  
28 ~~the applicant:~~

29 ~~1. Has been finally adjudicated as owing \$500 or more~~  
30 ~~in delinquent cigarette taxes;~~

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

3           3. Has been convicted of selling stolen or counterfeit  
4 cigarettes, receiving stolen cigarettes, or being involved in  
5 the counterfeiting of cigarettes;

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

16           5. Has imported, or caused to be imported, into the  
17 United States any cigarette in violation of 19 U.S.C. s.  
18 1681a; or

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

24           (d) The division may refuse to issue a ~~distributing~~  
25 ~~agent, wholesale, or exporter~~ permit to any person, firm, or  
26 corporation whose permit under the cigarette law has been  
27 revoked, ~~or~~ to any corporation, an officer of which has had  
28 his or her permit under the cigarette law revoked, or to any  
29 person who is or has been an officer of a corporation whose  
30 permit has been revoked under the cigarette law. Any permit  
31

1 issued to a firm or corporation prohibited from obtaining such  
2 permit under the cigarette law may be revoked by the division.

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

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

29 (g) Permittees, by acceptance of their permits, agree  
30 that their places of business or vehicles transporting  
31 cigarettes shall always be subject to be inspected and

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

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

27 Section 9. Section 210.16, Florida Statutes, is  
28 amended to read:

29 210.16 Revocation or suspension of permit.--

30 (1) The Division of Alcoholic Beverages and Tobacco is  
31 given full power and authority to revoke the permit of any

1 ~~person wholesale dealer~~ receiving a permit to engage in  
2 business under this part or chapter 569 for violation of any  
3 of the provisions of this part or chapter 569.

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

8 ~~(3)(2)~~ The division may suspend for a reasonable  
9 period of time or revoke, in its discretion, the permits ~~of~~  
10 ~~wholesale dealers~~ issued under the provisions of this part or  
11 chapter 569 to any person who has violated any other provision  
12 of this part or chapter 569 for the same causes and under the  
13 same limitations as is authorized hereunder to revoke the  
14 permits of such wholesale dealers.

15 ~~(4)(3)~~ No person ~~wholesale dealer~~ whose permit for any  
16 place of business has been revoked shall engage in business  
17 under this part or chapter 569 at such place of business after  
18 such revocation until a new permit is issued. No person  
19 ~~wholesale dealer~~ whose permit for any place of business has  
20 been revoked shall be permitted to have said permit renewed,  
21 or to obtain an additional cigarette permit for any other  
22 place of business, for a period of 2 years ~~6 months~~ after the  
23 date such revocation becomes final.

24 ~~(5)(4)~~ In addition to lieu of the suspension or  
25 revocation of permits, the division may impose civil penalties  
26 against holders of permits for violations of this part or  
27 rules and regulations relating thereto. No civil penalty so  
28 imposed shall exceed \$2,500 ~~\$1,000~~ for each offense, and all  
29 amounts collected shall be deposited with the Chief Financial  
30 Officer to the credit of the General Revenue Fund. If the  
31 holder of the permit fails to pay the civil penalty, his or



1 her permit shall be suspended for such period of time as the  
2 division may specify.

3 Section 10. Subsections (2), (3), and (7) of section  
4 210.18, Florida Statutes, are amended, and subsection (9) is  
5 added to that section, to read:

6 210.18 Penalties for tax evasion; reports by  
7 sheriffs.--

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

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

1 felony of the third degree, punishable as provided in s.  
2 775.082, s. 775.083, or s. 775.084.

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

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

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

27 2. A subsequent violation with a total quantity of  
28 fewer than two cartons of cigarettes or the equivalent amount  
29 of other cigarettes by a person who does not hold a permit or  
30 who holds a retail permit pursuant to this part and 10 cartons  
31 or the equivalent amount of other cigarettes by the holder of

1 any other type of permit may be punishable by a fine not to  
2 exceed \$5,000 or five times the retail value of the cigarettes  
3 involved, whichever is greater, or imprisonment not to exceed  
4 5 years, or both, and shall also result in the revocation by  
5 the division of the permit of the manufacturer, importer,  
6 distributing agent, wholesale dealer, or retail dealer.

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

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

27  
28 For purposes of this subsection, any counterfeit cigarettes  
29 seized by the division shall be destroyed.

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

1           210.181 Civil penalties.--

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

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

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

18           772.102 Definitions.--As used in this chapter, the  
19 term:

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

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

25           1. Section 210.18, relating to evasion of payment of  
26 cigarette taxes.

27           2. Section 414.39, relating to public assistance  
28 fraud.

29           3. Section 440.105 or s. 440.106, relating to workers'  
30 compensation.

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

- 1           5. Chapter 517, relating to securities transactions.
- 2           6. Section 550.235, s. 550.3551, or s. 550.3605,
- 3 relating to dogracing and horseracing.
- 4           7. Chapter 550, relating to jai alai frontons.
- 5           8. Chapter 552, relating to the manufacture,
- 6 distribution, and use of explosives.
- 7           9. Chapter 562, relating to beverage law enforcement.
- 8           10. Section 624.401, relating to transacting insurance
- 9 without a certificate of authority, s. 624.437(4)(c)1.,
- 10 relating to operating an unauthorized multiple-employer
- 11 welfare arrangement, or s. 626.902(1)(b), relating to
- 12 representing or aiding an unauthorized insurer.
- 13           11. Chapter 687, relating to interest and usurious
- 14 practices.
- 15           12. Section 721.08, s. 721.09, or s. 721.13, relating
- 16 to real estate timeshare plans.
- 17           13. Chapter 782, relating to homicide.
- 18           14. Chapter 784, relating to assault and battery.
- 19           15. Chapter 787, relating to kidnapping.
- 20           16. Chapter 790, relating to weapons and firearms.
- 21           17. Section 796.03, s. 796.04, s. 796.05, or s.
- 22 796.07, relating to prostitution.
- 23           18. Chapter 806, relating to arson.
- 24           19. Section 810.02(2)(c), relating to specified
- 25 burglary of a dwelling or structure.
- 26           20. Chapter 812, relating to theft, robbery, and
- 27 related crimes.
- 28           21. Chapter 815, relating to computer-related crimes.
- 29           22. Chapter 817, relating to fraudulent practices,
- 30 false pretenses, fraud generally, and credit card crimes.
- 31

1           23. Section 827.071, relating to commercial sexual  
2 exploitation of children.

3           24. Chapter 831, relating to forgery and  
4 counterfeiting.

5           25. Chapter 832, relating to issuance of worthless  
6 checks and drafts.

7           26. Section 836.05, relating to extortion.

8           27. Chapter 837, relating to perjury.

9           28. Chapter 838, relating to bribery and misuse of  
10 public office.

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

12           30. Section 847.011, s. 847.012, s. 847.013, s.  
13 847.06, or s. 847.07, relating to obscene literature and  
14 profanity.

15           31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,  
16 or s. 849.25, relating to gambling.

17           32. Chapter 893, relating to drug abuse prevention and  
18 control.

19           33. Section 914.22 or s. 914.23, relating to  
20 witnesses, victims, or informants.

21           34. Section 918.12 or s. 918.13, relating to tampering  
22 with jurors and evidence.

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

27           895.02 Definitions.--As used in ss. 895.01-895.08, the  
28 term:

29           (1) "Racketeering activity" means to commit, to  
30 attempt to commit, to conspire to commit, or to solicit,  
31 coerce, or intimidate another person to commit:

- 1 (a) Any crime which is chargeable by indictment or  
2 information under the following provisions of the Florida  
3 Statutes:
- 4 1. Section 210.18, relating to evasion of payment of  
5 cigarette taxes.
  - 6 2. Section 403.727(3)(b), relating to environmental  
7 control.
  - 8 3. Section 409.920 or s. 409.9201, relating to  
9 Medicaid fraud.
  - 10 4. Section 414.39, relating to public assistance  
11 fraud.
  - 12 5. Section 440.105 or s. 440.106, relating to workers'  
13 compensation.
  - 14 6. Section 465.0161, relating to distribution of  
15 medicinal drugs without a permit as an Internet pharmacy.
  - 16 7. Sections 499.0051, 499.0052, 499.00535, 499.00545,  
17 and 499.0691, relating to crimes involving contraband and  
18 adulterated drugs.
  - 19 8. Part IV of chapter 501, relating to telemarketing.
  - 20 9. Chapter 517, relating to sale of securities and  
21 investor protection.
  - 22 10. Section 550.235, s. 550.3551, or s. 550.3605,  
23 relating to dogracing and horseracing.
  - 24 11. Chapter 550, relating to jai alai frontons.
  - 25 12. Chapter 552, relating to the manufacture,  
26 distribution, and use of explosives.
  - 27 13. Chapter 560, relating to money transmitters, if  
28 the violation is punishable as a felony.
  - 29 14. Chapter 562, relating to beverage law enforcement.
  - 30 15. Section 624.401, relating to transacting insurance  
31 without a certificate of authority, s. 624.437(4)(c)1.,

1 relating to operating an unauthorized multiple-employer  
2 welfare arrangement, or s. 626.902(1)(b), relating to  
3 representing or aiding an unauthorized insurer.  
4       16. Section 655.50, relating to reports of currency  
5 transactions, when such violation is punishable as a felony.  
6       17. Chapter 687, relating to interest and usurious  
7 practices.  
8       18. Section 721.08, s. 721.09, or s. 721.13, relating  
9 to real estate timeshare plans.  
10       19. Chapter 782, relating to homicide.  
11       20. Chapter 784, relating to assault and battery.  
12       21. Chapter 787, relating to kidnapping.  
13       22. Chapter 790, relating to weapons and firearms.  
14       23. Section 796.03, s. 796.035, s. 796.04, s. 796.045,  
15 s. 796.05, or s. 796.07, relating to prostitution and sex  
16 trafficking.  
17       24. Chapter 806, relating to arson.  
18       25. Section 810.02(2)(c), relating to specified  
19 burglary of a dwelling or structure.  
20       26. Chapter 812, relating to theft, robbery, and  
21 related crimes.  
22       27. Chapter 815, relating to computer-related crimes.  
23       28. Chapter 817, relating to fraudulent practices,  
24 false pretenses, fraud generally, and credit card crimes.  
25       29. Chapter 825, relating to abuse, neglect, or  
26 exploitation of an elderly person or disabled adult.  
27       30. Section 827.071, relating to commercial sexual  
28 exploitation of children.  
29       31. Chapter 831, relating to forgery and  
30 counterfeiting.  
31



- 1           32. Chapter 832, relating to issuance of worthless  
2 checks and drafts.
- 3           33. Section 836.05, relating to extortion.
- 4           34. Chapter 837, relating to perjury.
- 5           35. Chapter 838, relating to bribery and misuse of  
6 public office.
- 7           36. Chapter 843, relating to obstruction of justice.
- 8           37. Section 847.011, s. 847.012, s. 847.013, s.  
9 847.06, or s. 847.07, relating to obscene literature and  
10 profanity.
- 11          38. Section 849.09, s. 849.14, s. 849.15, s. 849.23,  
12 or s. 849.25, relating to gambling.
- 13          39. Chapter 874, relating to criminal street gangs.
- 14          40. Chapter 893, relating to drug abuse prevention and  
15 control.
- 16          41. Chapter 896, relating to offenses related to  
17 financial transactions.
- 18          42. Sections 914.22 and 914.23, relating to tampering  
19 with a witness, victim, or informant, and retaliation against  
20 a witness, victim, or informant.
- 21          43. Sections 918.12 and 918.13, relating to tampering  
22 with jurors and evidence.
- 23          Section 14. This act shall take effect October 1,  
24 2005.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 816

4     The committee substitute amends the definition of  
5     "manufacturer" in 210.01, F.S., to limit the term to domestic  
6     persons. The committee substitute amends s. 210.021, F.S., to  
7     require that a dealer or agent must remit the cigarette  
8     excise taxes by certified check or electronic funds transfer  
9     during the dealer or agent's initial period of licensure or  
10    appointment, but not to exceed 12 months. It amends s.210.08,  
11    F.S., to set the amount for the surety bond, certificate of  
12    deposit, or revocable letter of credit that must be filed with  
13    the Division of Alcoholic Beverages and Tobacco (DABT) for  
14    payment of taxes at 110 percent of the estimated tax liability  
15    for 30 days, but not less than \$2000.

16    The committee substitute amends s. 210.085, F.S., to delete  
17    the requirement that an importer may only obtain cigarettes  
18    from a licensed manufacturer, and that a dealer must obtain  
19    cigarettes from a manufacturer or importer with a valid,  
20    current permit under 26 U.S.C. 5712. It exempts transactions  
21    under S. 210.04(9), F.S. It permits a distributing agent to  
22    accept cigarettes from a manufacturer or importer with a valid  
23    current permit for transfer to a dealer with a valid current  
24    permit. It also prohibits a distributing agent from owning  
25    or selling cigarettes.

26    The committee substitute amends s. 210.09(2), F.S., to  
27    authorize the division to require the keeping of records and  
28    monthly reporting of the sale and distribution of cigarettes  
29    by manufacturers and importers.

30    The committee substitute amends s. 210.15(1)(e), F.S., to set  
31    the cigarettes permit fee for a manufacturer, importer, and  
32    distributing agent at \$100. The committee substitute deletes  
33    the \$5 annual permit fee for distributing agents and the  
34    automatic annual renewal of the permit upon payment of the  
35    annual fee. It amends s. 210.15, F.S., to clarify when a  
36    permit may not be issued, maintained, or renewed, and  
37    establishes an initial \$100 permit fee for manufacturers,  
38    importers, and distributing agents.

39    The committee substitute restores the misdemeanor penalty for  
40    possession of less than 50 cartons of unstamped cigarettes in  
41    s. 210.18, F.S. It also requires state law enforcement  
42    officers to report the seizure of unstamped cigarettes to the  
43    DABT, and requires that the division maintain records of the  
44    number of seizures and number of seized cigarettes. The  
45    committee substitute clarifies which penalties apply to  
46    persons who do not hold a permit or hold a retail permit, and  
47    which penalties apply to persons holding other types of  
48    permits.

49    The committee substitute amends s. 210.181, F.S., to exclude  
50    licensee subject to penalties under s. 210.16(5), F.S.