

By the Committees on General Government Appropriations;
Regulated Industries; and Senators Haridopolos, Dockery and
Lynn

601-2232-05

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, pursuant
7 to the Florida Contraband Forfeiture Act, to
8 claim certain property and materials from
9 certain dealers and retailers who attempt to
10 defraud the state; authorizing the destruction
11 of certain cigarettes; amending s. 210.15,
12 F.S.; providing criteria for permit
13 application; prohibiting issuance, maintenance,
14 or renewal of certain permits for certain
15 applicants; providing guidelines for permit
16 application denial; amending s. 210.16, F.S.;
17 revising the authority of the Division of
18 Alcoholic Beverages and Tobacco to revoke or
19 suspend the permits of certain persons under
20 certain circumstances; revising a penalty
21 period for revoked permits; increasing a civil
22 penalty; amending s. 210.18, F.S.; expanding
23 the group of violators subject to criminal
24 liability; prohibiting the sale or possession
25 for sale of counterfeit cigarettes; providing
26 penalties; requiring that the seizure of
27 unstamped cigarettes be reported to the
28 division; requiring the division to keep
29 records concerning seized unstamped cigarettes;
30 creating s. 210.181, F.S.; providing civil
31 penalties for failure to comply with certain

1 duties or pay certain taxes; reenacting ss.
2 772.102(1)(a) and 895.02(1)(a), F.S., relating
3 to crimes constituting a "criminal activity"
4 and definitions as used in the Florida RICO
5 Act, to incorporate the amendment to s. 210.18,
6 F.S., in references thereto; providing an
7 effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

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

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

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

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

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:

10 1. Is transporting cigarettes through this state to
11 another location outside this state under a proper bill of
12 lading or freight bill that states the quantity, source, and
13 destination of such cigarettes or to cigarettes shipped or
14 otherwise transported pursuant to s. 210.04(9); or

15 2. Does not issue paper bills of lading or freight
16 bills and does not obtain specific information about the
17 contents of the shipment which includes a description of the
18 freight carried but uses electronic shipping documents in its
19 ordinary course of business to provide transportation services
20 for the individually addressed packages weighing less than 150
21 pounds, which electronic shipping documents shall be made
22 available for inspection upon request.

23 (c) In any case in which the division or its duly
24 authorized agent, or any law enforcement officer of this
25 state, has probable cause to believe that any vehicle is
26 transporting cigarettes in violation of this part, the
27 division, such agent, or such law enforcement officer is
28 authorized to stop such vehicle and inspect the vehicle for
29 contraband cigarettes.

30 (2) The division is authorized to prescribe and
31 promulgate by rules and regulations, which shall have the

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

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

29 (4)(a) All persons who are either cigarette
30 manufacturers, importers, wholesalers, ~~vending machine~~
31 ~~operators~~ or distributing agents, and agents and employees of

1 | the same, are required to keep daily sales tickets or invoices
2 | of cigarette sales and it shall be the duty of said persons to
3 | see that each sales ticket and invoice handled by them or on
4 | behalf of them show the correct name and address to whom sold
5 | and the number of packages or cartons of each brand sold. It
6 | shall also be the duty of said persons to see that each sales
7 | ticket or invoice correctly shows whether the same is inside
8 | or outside of a qualified municipality and if the sale is made
9 | within the limits of a qualified municipality, the correct
10 | name of the municipality must be indicated.

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

16 | 210.12 Seizures; forfeiture proceedings.--

17 | (1) The state, acting by and through the division,
18 | shall be authorized and empowered to seize, confiscate, and
19 | ~~forfeit for the use and benefit of the state,~~ any cigarettes
20 | upon which taxes payable hereunder may be unpaid or that are
21 | otherwise held in violation of the requirements of this
22 | chapter, and also any vending machine or receptacle in which
23 | ~~such~~ cigarettes upon which taxes have not been paid are held
24 | for sale, or any vending machine that does not have affixed
25 | thereto the identification sticker required by the provisions
26 | of s. 210.07, or which does not display at all times at least
27 | one package of each brand of cigarettes located therein so the
28 | same is clearly visible and arranged in such a manner that the
29 | cigarette tax stamp or meter impression of the stamp affixed
30 | thereto is clearly visible. Such seizure may be made by the
31 |

1 division, its duly authorized representative, any sheriff or
2 deputy sheriff, or any police officer.

3 (2) All fixtures, equipment, and other materials and
4 personal property on the premises of any dealer, retail
5 dealer, or distributing agent who, with intent to defraud the
6 state, fails to keep or make any record, return, report, or
7 inventory required by this part; keeps or makes any false or
8 fraudulent record, return, report, or inventory required by
9 this part; refuses to pay any tax imposed by this part; or
10 attempts in any manner to evade or defeat the requirements of
11 this part shall be forfeited to the state, as provided by the
12 Florida Contraband Forfeiture Act.

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

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

17 210.15 Permits.--

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

1 as the division may require. If the applicant has or intends
2 to have more than one place of business dealing in cigarettes
3 within this state, the application shall state the location of
4 each place of business. If the applicant is an association,
5 the application shall set forth the names and addresses of the
6 persons constituting the association, and if a corporation,
7 the names and addresses of the principal officers thereof and
8 any other information prescribed by the division for the
9 purpose of identification. The application shall be signed and
10 verified by oath or affirmation by the owner, if a natural
11 person, and in the case of an association or partnership,
12 members or partners thereof, and in the case of a corporation,
13 by an executive officer thereof or by any person specifically
14 authorized by the corporation to sign the application, to
15 which shall be attached the written evidence of this
16 authority. ~~The cigarette permit for a distributing agent shall~~
17 ~~be issued annually for which an annual fee of \$5 shall be~~
18 ~~charged.~~

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

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

3 (c) No ~~distributing agent, wholesale dealer, or~~
4 exporter permit under this part or chapter 569 shall be
5 issued, maintained, or renewed if the applicant, its officers,
6 or any person or persons owning directly or indirectly, in the
7 aggregate, more than 10 percent of the ownership interests in
8 the applicant:

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

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

13 3. Has been convicted of selling stolen or counterfeit
14 cigarettes, receiving stolen cigarettes, or being involved in
15 the counterfeiting of cigarettes;

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

26 5. Has imported, or caused to be imported, into the
27 United States any cigarette in violation of 19 U.S.C. s.
28 1681a; or

29 6. Has imported, or caused to be imported into the
30 United States, or manufactured for sale or distribution in the
31 United States, any cigarette that does not fully comply with

1 the Federal Cigarette Labeling and Advertising Act (15 U.S.C.
2 ss. 1331 et seq.).

3 (d) The division may refuse to issue a ~~distributing~~
4 ~~agent, wholesale, or exporter~~ permit to any person, firm, or
5 corporation whose permit under the cigarette law has been
6 revoked, ~~or~~ to any corporation, an officer of which has had
7 his or her permit under the cigarette law revoked, or to any
8 person who is or has been an officer of a corporation whose
9 permit has been revoked under the cigarette law. Any permit
10 issued to a firm or corporation prohibited from obtaining such
11 permit under the cigarette law may be revoked by the division.

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

3 (f) The cigarette permits issued under this section
4 ~~permit for a wholesale dealer or exporter~~ shall be renewed
5 from year to year ~~as a matter of course,~~ at an annual cost of
6 \$100, on or before July 1, upon making application to the
7 division and upon payment of the annual renewal fee.

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

26 (h) No retail sales of cigarettes may be made at a
27 location for which a wholesale dealer, distributing agent, or
28 exporter permit has been issued. The excise tax on sales made
29 to any traveling location, such as an itinerant store or
30 industrial caterer, shall be paid into the General Revenue
31 Fund unallocated. Cigarettes may be purchased for retail

1 | purposes only from a person holding a wholesale dealer permit.
2 | The invoice for the purchase of cigarettes must show the place
3 | of business for which the purchase is made and the cigarettes
4 | cannot be transferred to any other place of business for the
5 | purpose of resale.

6 | Section 9. Section 210.16, Florida Statutes, is
7 | amended to read:

8 | 210.16 Revocation or suspension of permit.--

9 | (1) The Division of Alcoholic Beverages and Tobacco is
10 | given full power and authority to revoke the permit of any
11 | person ~~wholesale dealer~~ receiving a permit to engage in
12 | business under this part or chapter 569 for violation of any
13 | of the provisions of this part or chapter 569.

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

18 | ~~(3)(2)~~ The division may suspend for a reasonable
19 | period of time or revoke, in its discretion, the permits ~~of~~
20 | ~~wholesale dealers~~ issued under the provisions of this part or
21 | chapter 569 to any person who has violated any other provision
22 | of this part or chapter 569 for the same causes and under the
23 | ~~same limitations as is authorized hereunder to revoke the~~
24 | ~~permits of such wholesale dealers.~~

25 | ~~(4)(3)~~ No person ~~wholesale dealer~~ whose permit for any
26 | place of business has been revoked shall engage in business
27 | under this part or chapter 569 at such place of business after
28 | such revocation until a new permit is issued. No person
29 | ~~wholesale dealer~~ whose permit for any place of business has
30 | been revoked shall be permitted to have said permit renewed,
31 | or to obtain an additional cigarette permit for any other

1 place of business, for a period of 2 years ~~6 months~~ after the
2 date such revocation becomes final.

3 ~~(5)(4)~~ In addition to lieu of the suspension or
4 revocation of permits, the division may impose civil penalties
5 against holders of permits for violations of this part or
6 rules and regulations relating thereto. No civil penalty so
7 imposed shall exceed ~~\$2,500~~ \$1,000 for each offense, and all
8 amounts collected shall be deposited with the Chief Financial
9 Officer to the credit of the General Revenue Fund. If the
10 holder of the permit fails to pay the civil penalty, his or
11 her permit shall be suspended for such period of time as the
12 division may specify.

13 Section 10. Subsections (2), (3), and (7) of section
14 210.18, Florida Statutes, are amended, and subsection (9) is
15 added to that section, to read:

16 210.18 Penalties for tax evasion; reports by
17 sheriffs.--

18 (2) Except as otherwise provided in this section, any
19 person ~~wholesale or retail dealer~~ who fails, neglects, or
20 refuses to comply with, or violates the provisions of, this
21 part or the rules adopted ~~and regulations promulgated~~ by the
22 division under this part commits is ~~is guilty of~~ a misdemeanor of
23 the first degree, punishable as provided in s. 775.082 or s.
24 775.083. Any person ~~wholesale or retail dealer~~ who has been
25 convicted of a violation of any provision of the cigarette tax
26 law and who is thereafter convicted of a further violation of
27 the cigarette tax law commits is, upon conviction of such
28 further offense, ~~guilty of~~ a felony of the third degree,
29 punishable as provided in s. 775.082, s. 775.083, or s.
30 775.084.
31

1 (3) Any person who falsely or fraudulently makes,
2 forges, alters, or counterfeits any stamp or impression die
3 used in meter machines prescribed by the division under the
4 provisions of this part; or, with intent to evade taxes, jams,
5 tampers with, or alters such a machine; or causes or procures
6 to be falsely or fraudulently made, forged, altered, or
7 counterfeited any such stamp or die; or knowingly and
8 willfully utters, purchases, passes or tenders as true any
9 such false, altered, or counterfeited stamp or die impression;
10 or, with the intent to defraud the state, fails to comply with
11 any other requirement of this part commits is guilty of a
12 felony of the third degree, punishable as provided in s.
13 775.082, s. 775.083, or s. 775.084.

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

23 (9) Notwithstanding any other provision of law, the
24 sale or possession for sale of counterfeit cigarettes by any
25 person or by a manufacturer, importer, distributing agent,
26 wholesale dealer, or retail dealer shall result in the seizure
27 of the product and related machinery by the division or any
28 law enforcement agency.

29 (10) It is unlawful to sell or possess with the intent
30 to sell counterfeit cigarettes, as defined in s. 210.01(22).
31

1 (a) A person who either does not hold a permit, or
2 holds a retail permit under the provisions of this chapter,
3 who violates this subsection commits a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084, and is subject to the imposition of fines and
6 additional penalties as follows:

7 1. If the quantity of counterfeit cigarettes sold or
8 possessed with the intent to sell is less than two cartons or
9 the equivalent, the fine for a first violation shall not
10 exceed \$1,000 or five times the retail value of the
11 counterfeit cigarettes, whichever is greater. A subsequent
12 violation may result in the imposition of a fine not to exceed
13 \$5,000 or five times the retail value of the counterfeit
14 cigarettes, and shall result in revocation of the retail
15 permit by the division.

16 2. If the quantity of counterfeit cigarettes sold or
17 possessed with the intent to sell is two cartons or more, or
18 the equivalent, the fine for a first violation shall not
19 exceed \$2,000 or five times the retail value of the
20 counterfeit cigarettes, whichever is greater. A subsequent
21 violation may result in the imposition of a fine not to exceed
22 \$50,000 or five times the retail value of the counterfeit
23 cigarettes, whichever is greater, and shall result in
24 revocation of the retail permit by the division.

25 (b) A person who holds a permit, other than a retail
26 permit, under the provisions of this chapter, who violates
27 this subsection commits a felony of the third degree,
28 punishable as provided in s. 775.082, s. 775.083, or s.
29 775.084, and is subject to the imposition of fines and
30 additional penalties as follows:

1 1. If the quantity of counterfeit cigarettes sold or
2 possessed with the intent to sell is less than ten cartons or
3 the equivalent, the fine for a first violation shall not
4 exceed \$1,000 or five times the retail value of the
5 counterfeit cigarettes, whichever is greater. A subsequent
6 violation may result in the imposition of a fine not to exceed
7 \$5,000 or five times the retail value of the counterfeit
8 cigarettes, and shall result in revocation of the permit by
9 the division.

10 2. If the quantity of counterfeit cigarettes sold or
11 possessed with the intent to sell is ten cartons or more, or
12 the equivalent, the fine for a first violation shall not
13 exceed \$2,000 or five times the retail value of the
14 counterfeit cigarettes, whichever is greater. A subsequent
15 violation may result in the imposition of a fine not to exceed
16 \$50,000 or five times the retail value of the counterfeit
17 cigarettes, whichever is greater, and shall result in
18 revocation of the retail permit by the division.

19
20 For purposes of this subsection, any counterfeit cigarettes
21 seized by the division shall be destroyed.

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

24 210.181 Civil penalties.--

25 (1) Except as provided in s. 210.16(5), whoever
26 knowingly omits, neglects, or refuses to comply with any duty
27 imposed upon him or her by this part, or to do or cause to be
28 done any of the things required by this part, or does anything
29 prohibited by this part shall, in addition to any other
30 penalty provided in this part, be liable for a fine of \$1,000

1 or five times the retail value of the cigarettes involved,
2 whichever is greater.

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

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

11 772.102 Definitions.--As used in this chapter, the
12 term:

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

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

18 1. Section 210.18, relating to evasion of payment of
19 cigarette taxes.

20 2. Section 414.39, relating to public assistance
21 fraud.

22 3. Section 440.105 or s. 440.106, relating to workers'
23 compensation.

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

25 5. Chapter 517, relating to securities transactions.

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

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

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

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

- 1 10. 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 11. Chapter 687, relating to interest and usurious
7 practices.
- 8 12. Section 721.08, s. 721.09, or s. 721.13, relating
9 to real estate timeshare plans.
- 10 13. Chapter 782, relating to homicide.
- 11 14. Chapter 784, relating to assault and battery.
- 12 15. Chapter 787, relating to kidnapping.
- 13 16. Chapter 790, relating to weapons and firearms.
- 14 17. Section 796.03, s. 796.04, s. 796.05, or s.
15 796.07, relating to prostitution.
- 16 18. Chapter 806, relating to arson.
- 17 19. Section 810.02(2)(c), relating to specified
18 burglary of a dwelling or structure.
- 19 20. Chapter 812, relating to theft, robbery, and
20 related crimes.
- 21 21. Chapter 815, relating to computer-related crimes.
- 22 22. Chapter 817, relating to fraudulent practices,
23 false pretenses, fraud generally, and credit card crimes.
- 24 23. Section 827.071, relating to commercial sexual
25 exploitation of children.
- 26 24. Chapter 831, relating to forgery and
27 counterfeiting.
- 28 25. Chapter 832, relating to issuance of worthless
29 checks and drafts.
- 30 26. Section 836.05, relating to extortion.
- 31 27. Chapter 837, relating to perjury.

- 1 28. Chapter 838, relating to bribery and misuse of
2 public office.
- 3 29. Chapter 843, relating to obstruction of justice.
- 4 30. Section 847.011, s. 847.012, s. 847.013, s.
5 847.06, or s. 847.07, relating to obscene literature and
6 profanity.
- 7 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
8 or s. 849.25, relating to gambling.
- 9 32. Chapter 893, relating to drug abuse prevention and
10 control.
- 11 33. Section 914.22 or s. 914.23, relating to
12 witnesses, victims, or informants.
- 13 34. Section 918.12 or s. 918.13, relating to tampering
14 with jurors and evidence.
- 15 Section 13. For the purpose of incorporating the
16 amendment to section 210.18, Florida Statutes, in a reference
17 thereto, paragraph (a) of subsection (1) of section 895.02,
18 Florida Statutes, is reenacted to read:
- 19 895.02 Definitions.--As used in ss. 895.01-895.08, the
20 term:
- 21 (1) "Racketeering activity" means to commit, to
22 attempt to commit, to conspire to commit, or to solicit,
23 coerce, or intimidate another person to commit:
- 24 (a) Any crime which is chargeable by indictment or
25 information under the following provisions of the Florida
26 Statutes:
- 27 1. Section 210.18, relating to evasion of payment of
28 cigarette taxes.
- 29 2. Section 403.727(3)(b), relating to environmental
30 control.
- 31

- 1 3. Section 409.920 or s. 409.9201, relating to
- 2 Medicaid fraud.
- 3 4. Section 414.39, relating to public assistance
- 4 fraud.
- 5 5. Section 440.105 or s. 440.106, relating to workers'
- 6 compensation.
- 7 6. Section 465.0161, relating to distribution of
- 8 medicinal drugs without a permit as an Internet pharmacy.
- 9 7. Sections 499.0051, 499.0052, 499.00535, 499.00545,
- 10 and 499.0691, relating to crimes involving contraband and
- 11 adulterated drugs.
- 12 8. Part IV of chapter 501, relating to telemarketing.
- 13 9. Chapter 517, relating to sale of securities and
- 14 investor protection.
- 15 10. Section 550.235, s. 550.3551, or s. 550.3605,
- 16 relating to dogracing and horseracing.
- 17 11. Chapter 550, relating to jai alai frontons.
- 18 12. Chapter 552, relating to the manufacture,
- 19 distribution, and use of explosives.
- 20 13. Chapter 560, relating to money transmitters, if
- 21 the violation is punishable as a felony.
- 22 14. Chapter 562, relating to beverage law enforcement.
- 23 15. Section 624.401, relating to transacting insurance
- 24 without a certificate of authority, s. 624.437(4)(c)1.,
- 25 relating to operating an unauthorized multiple-employer
- 26 welfare arrangement, or s. 626.902(1)(b), relating to
- 27 representing or aiding an unauthorized insurer.
- 28 16. Section 655.50, relating to reports of currency
- 29 transactions, when such violation is punishable as a felony.
- 30 17. Chapter 687, relating to interest and usurious
- 31 practices.

- 1 18. Section 721.08, s. 721.09, or s. 721.13, relating
- 2 to real estate timeshare plans.
- 3 19. Chapter 782, relating to homicide.
- 4 20. Chapter 784, relating to assault and battery.
- 5 21. Chapter 787, relating to kidnapping.
- 6 22. Chapter 790, relating to weapons and firearms.
- 7 23. Section 796.03, s. 796.035, s. 796.04, s. 796.045,
- 8 s. 796.05, or s. 796.07, relating to prostitution and sex
- 9 trafficking.
- 10 24. Chapter 806, relating to arson.
- 11 25. Section 810.02(2)(c), relating to specified
- 12 burglary of a dwelling or structure.
- 13 26. Chapter 812, relating to theft, robbery, and
- 14 related crimes.
- 15 27. Chapter 815, relating to computer-related crimes.
- 16 28. Chapter 817, relating to fraudulent practices,
- 17 false pretenses, fraud generally, and credit card crimes.
- 18 29. Chapter 825, relating to abuse, neglect, or
- 19 exploitation of an elderly person or disabled adult.
- 20 30. Section 827.071, relating to commercial sexual
- 21 exploitation of children.
- 22 31. Chapter 831, relating to forgery and
- 23 counterfeiting.
- 24 32. Chapter 832, relating to issuance of worthless
- 25 checks and drafts.
- 26 33. Section 836.05, relating to extortion.
- 27 34. Chapter 837, relating to perjury.
- 28 35. Chapter 838, relating to bribery and misuse of
- 29 public office.
- 30 36. Chapter 843, relating to obstruction of justice.
- 31

1 37. Section 847.011, s. 847.012, s. 847.013, s.
2 847.06, or s. 847.07, relating to obscene literature and
3 profanity.

4 38. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
5 or s. 849.25, relating to gambling.

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

7 40. Chapter 893, relating to drug abuse prevention and
8 control.

9 41. Chapter 896, relating to offenses related to
10 financial transactions.

11 42. Sections 914.22 and 914.23, relating to tampering
12 with a witness, victim, or informant, and retaliation against
13 a witness, victim, or informant.

14 43. Sections 918.12 and 918.13, relating to tampering
15 with jurors and evidence.

16 Section 14. This act shall take effect October 1,
17 2005.

18

19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 CS/SB 816

21

22 This committee substitute:

- 23 o Amends s. 210.09, F.S., to exempt from the reporting
24 requirement shippers who use electronic shipping
documents in their regular course of business.
- 25 o Raises the standard for an officer to stop and search a
26 vehicle believed to be carrying "illegal" cigarettes to
"probable cause."
- 27 o Amends s. 210.12, F.S. to reference the Florida
28 Contraband Forfeiture Act.

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