



332194

LEGISLATIVE ACTION

Senate

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House

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Floor: 4/AD/2R

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04/16/2009 02:51 PM

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Senator Deutch moved the following:

**Senate Amendment (with title amendment)**

Between lines 219 and 220

insert:

Section 5. Section 210.095, Florida Statutes, is created to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.-

(1) For purposes of this section, the term:

(a) "Adult" means an individual who is at least the legal minimum purchase age for tobacco products.

(b) "Consumer" means a person in this state who comes into



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13 possession of any tobacco product subject to the tax imposed by  
14 this chapter and who, at the time of possession, is not a  
15 distributor intending to sell or distribute the tobacco product,  
16 a retailer, or a wholesaler.

17 (c) "Delivery sale" means any sale of tobacco products to a  
18 consumer in this state for which:

19 1. The consumer submits the order for the sale by means of  
20 telephonic or other voice transmission, mail, a delivery  
21 service, or the Internet or other online service; or

22 2. The tobacco products are delivered by use of mail or a  
23 delivery service.

24 (d) "Delivery service" means any person engaged in the  
25 commercial delivery of letters, packages, or other containers.

26 (e) "Legal minimum purchase age" means the minimum age at  
27 which an individual may legally purchase tobacco products in  
28 this state.

29 (f) "Mail" or "mailing" means the shipment of tobacco  
30 products through the United States Postal Service.

31 (g) "Retailer" means any person who is not a licensed  
32 distributor in possession of tobacco products subject to tax  
33 under this chapter for the purposes of selling the tobacco  
34 products to consumers.

35 (h) "Shipping container" means a container in which tobacco  
36 products are shipped in connection with a delivery sale.

37 (i) "Shipping document" means a bill of lading, airbill,  
38 United States Postal Service form, or any other document used to  
39 verify the undertaking by a delivery service to deliver letters,  
40 packages, or other containers.

41 (j) "Tobacco products" means all cigarettes, smoking



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42 tobacco, snuff, fine-cut chewing tobacco, cut and granulated  
43 tobacco, cavendish, plug or twist tobacco, and cigars.

44 (2) (a) A sale of tobacco products constituting a delivery  
45 sale pursuant to paragraph (1) (c) is a delivery sale regardless  
46 of whether the person accepting the order for the delivery sale  
47 is located inside or outside this state.

48 (b) A cigarette retailer must obtain a license from the  
49 department pursuant to the requirements of this chapter before  
50 accepting an order for a delivery sale.

51 (c) A person may not make a delivery sale of tobacco  
52 products to any individual who is not an adult.

53 (d) Each person accepting an order for a delivery sale  
54 shall comply with each of the following:

55 1. The age verification requirements set forth in  
56 subsection (3).

57 2. The disclosure requirements set forth in subsection (4).

58 3. The shipping requirements set forth in subsection (5).

59 4. The registration and reporting requirements set forth in  
60 subsection (6).

61 5. The tax collection requirements set forth in subsection  
62 (7).

63 6. The licensing and tax stamp requirements set forth in  
64 this chapter that apply to sales of tobacco products occurring  
65 entirely in this state.

66 7. All laws of this state generally applicable to sales of  
67 tobacco products occurring entirely in this state which impose  
68 excise taxes and assessments.

69 (3) A person may not mail, ship, or otherwise deliver  
70 tobacco products in connection with an order for a delivery sale



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71 unless, before the first delivery to the consumer, the person  
72 accepting the order for the delivery sale:  
73 (a) Obtains from the individual submitting the order a  
74 certification that includes:  
75 1. Reliable confirmation that the individual is an adult;  
76 and  
77 2. A statement signed by the individual in writing and  
78 under penalty of perjury that:  
79 a. Certifies the address and date of birth of the  
80 individual; and  
81 b. Confirms that the individual wants to receive delivery  
82 sales from a tobacco company and understands that, under the  
83 laws of this state, the following actions are illegal:  
84 (I) Signing another individual's name to the certification;  
85 (II) Selling tobacco products to individuals under the  
86 legal minimum purchase age; and  
87 (III) Purchasing tobacco products, if the person making the  
88 purchase is under the legal minimum purchase age.  
89 (b) Makes a good faith effort to verify the information  
90 contained in the certification provided by the individual  
91 pursuant to paragraph (a) against a commercially available  
92 database that may be reasonably relied upon for accurate age  
93 information or obtains a photocopy or other image of a valid  
94 government-issued identification card stating the date of birth  
95 or age of the individual.  
96 (c) Provides to the individual, via electronic mail or  
97 other means, a notice meeting the requirements of subsection  
98 (4).  
99 (d) If an order for tobacco products is made pursuant to an



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100 advertisement on the Internet, receives payment for the delivery  
101 sale from the consumer by a credit or debit card issued in the  
102 name of the consumer, or by personal or company check of the  
103 consumer.

104 (e) Imposes a two-carton minimum on each order of  
105 cigarettes, and requires payment for the purchase of any tobacco  
106 product to be made by personal check of the purchaser or the  
107 purchaser's credit card. Payment by money order or cash may not  
108 be received or permitted. The person accepting the order for  
109 delivery sale shall submit to each credit card acquiring company  
110 with which it has credit card sales identification information  
111 in an appropriate form and format so that the words "tobacco  
112 product" may be printed in the purchaser's credit card statement  
113 when a purchase of a tobacco product is made by credit card  
114 payment.

115 (f) Makes a telephone call after 5 p.m. to the purchaser  
116 confirming the order before shipping the tobacco products. The  
117 telephone call may be a person-to-person call or a recorded  
118 message. The person accepting the order for delivery sale is not  
119 required to speak directly with a person and may leave a message  
120 on an answering machine or by voice mail system.

121  
122 In addition to the requirements of this subsection, a person  
123 accepting an order for a delivery sale may request that a  
124 consumer provide an electronic mail address.

125 (4) The notice described in paragraph (3)(c) shall include  
126 prominent and clearly legible statements that sales of tobacco  
127 products are:

128 (a) Illegal if made to individuals who are not adults.



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129       (b) Restricted to those individuals who provide verifiable  
130 proof of age in accordance with subsection (3).

131       (c) Taxable under this chapter.

132  
133 The notice shall include an explanation of how each tax has  
134 been, or is to be, paid with respect to the delivery sale.

135       (5) Each person who mails, ships, or otherwise delivers  
136 tobacco products in connection with an order for a delivery sale  
137 shall:

138       (a) Include as part of the shipping documents, in a clear  
139 and conspicuous manner, the following statement: "Tobacco  
140 Products: Florida law prohibits shipping to individuals under 18  
141 years of age and requires the payment of all applicable taxes."

142       (b) Use a method of mailing, shipping, or delivery that  
143 obligates the delivery service to require:

144       1. The individual submitting the order for the delivery  
145 sale or another adult who resides at the individual's address to  
146 sign his or her name to accept delivery of the shipping  
147 container. Proof of the legal minimum purchase age of the  
148 individual accepting delivery is required only if the individual  
149 appears to be under 27 years of age.

150       2. Proof that the individual is either the addressee or the  
151 adult designated by the addressee, in the form of a valid,  
152 government-issued identification card bearing a photograph of  
153 the individual who signs to accept delivery of the shipping  
154 container.

155       (c) Provide to the delivery service retained to deliver the  
156 delivery sale evidence of full compliance with subsection (7).



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158 If the person accepting a purchase order for a delivery sale  
159 delivers the tobacco products without using a delivery service,  
160 the person must comply with all of the requirements of this  
161 section which apply to a delivery service ,and any failure to  
162 comply with a requirement of this section constitutes a  
163 violation thereof.

164 (6) (a) Before making sales or shipping tobacco products in  
165 connection with sales, a person shall file with the department a  
166 statement stating the person's name, trade name, and the address  
167 of the person's principal place of business, as well as any  
168 other place of business.

169 (b) No later than the 10th day of each month, each person  
170 who has made a sale or mailed, shipped, or otherwise delivered  
171 tobacco products in connection with any sale during the previous  
172 calendar month shall file with the department a memorandum or a  
173 copy of the invoice, providing for each sale:

174 1. The name and address of the individual who submitted the  
175 order for the sale.

176 2. The name and address of the individual who accepted  
177 delivery of the tobacco products.

178 3. The name and address of the person accepting the order  
179 for the sale of tobacco products.

180 4. The name and address of the delivery service and the  
181 name of the individual making the delivery.

182 5. The brand or brands of the tobacco products sold in the  
183 sale.

184 6. The quantity of each brand of tobacco products sold in  
185 the sale.

186 (c) A person may comply with the requirements of this



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187 subsection by complying with the requirements of 15 U.S.C. 376.

188 (d) This section does not apply to sales of tobacco  
189 products by a licensed distributor or to sales of tobacco  
190 products by a retailer purchased from a licensed distributor.

191 (7) Each person accepting a purchase order for a delivery  
192 sale shall collect and remit to the department all taxes imposed  
193 on tobacco products by this state with respect to the delivery  
194 sale. With respect to cigarettes, the collection and remission  
195 are not required if the person has obtained proof in the form of  
196 the presence of applicable tax stamps or tax exempt stamps, or  
197 other proof that the taxes have already been paid to this state.

198 (8) (a) Except as otherwise provided in this section, a  
199 violation of this section by a person other than an individual  
200 who is not an adult is a misdemeanor of the first degree,  
201 punishable as provided in s. 775.082 or s. 775.083, and:

202 1. For a first violation of this section, the person shall  
203 be fined \$1,000 or five times the retail value of the tobacco  
204 products involved in the violation, whichever is greater.

205 2. For a second or subsequent violation of this section,  
206 the person shall be fined \$5,000 or five times the retail value  
207 of the tobacco products involved in the violation, whichever is  
208 greater.

209 (b) A person who is an adult and who knowingly submits a  
210 false certification under subsection (3) commits a misdemeanor  
211 of the first degree, punishable as provided in s. 775.082 or s.  
212 775.083. For each offense, the person shall be fined \$10,000 or  
213 five times the retail value of the tobacco products involved in  
214 the violation, whichever is greater.

215 (c) A person who fails to pay any tax required in





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216 connection with a delivery sale shall pay, in addition to any  
217 other penalty, a penalty of five times the retail value of the  
218 tobacco products involved.

219 (d) Any tobacco products sold or attempted to be sold in a  
220 delivery sale not meeting the requirements of this section shall  
221 be forfeited to the state pursuant to s. 210.185.

222 (e) A person who, in connection with a delivery sale,  
223 delivers tobacco products on behalf of a delivery service to an  
224 individual who is not an adult commits a misdemeanor of the  
225 third degree, punishable as provided in s. 775.082 or s.  
226 775.083.

227 (f) Any fixture, equipment, or other material or personal  
228 property on the premises of any person who, with the intent to  
229 defraud this state, mails or ships tobacco products into this  
230 state and fails to satisfy any of the requirements of this  
231 section is a contraband article within the definition of s.  
232 932.701(2)(a)3.

233 (g) An individual who is not an adult and who knowingly  
234 violates any provision of this section commits a misdemeanor of  
235 the third degree, punishable as provided in s. 775.082 or s.  
236 775.083.

237 (9) The Attorney General, the Attorney General's designee,  
238 a state attorney, or any person who holds a permit under 26  
239 U.S.C. 5713 may bring an action in the appropriate court in this  
240 state to prevent or restrain violations of this section by any  
241 person.

242  
243 ===== T I T L E A M E N D M E N T =====

244 And the title is amended as follows:



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245 Delete line 18  
246 and insert:  
247 conform; creating s. 210.095, F.S.; providing  
248 definitions; providing that certain transactions  
249 constitute a delivery sale of tobacco products;  
250 requiring that a cigarette retailer obtain a license  
251 before accepting an order for a delivery sale;  
252 prohibiting the making of a delivery sale to a person  
253 who is not an adult; requiring that a person accepting  
254 an order for a delivery sale comply with certain  
255 requirements; prohibiting the mailing, shipping, or  
256 delivery of tobacco products in connection with an  
257 order for delivery sale unless, before the first  
258 delivery to a consumer, the person accepting such  
259 order takes certain actions; authorizing a person  
260 accepting an order for delivery sale to request that a  
261 consumer provide an e-mail address; requiring the  
262 delivery of a notice to consumers making orders for  
263 delivery sale; providing requirements for such notice;  
264 requiring that each person who mails, ships, or  
265 delivers tobacco products in connection with an order  
266 for delivery sale fulfill specified requirements;  
267 requiring that a person file a statement containing  
268 certain information with the Department of Business  
269 and Professional Regulation before selling or shipping  
270 tobacco products; requiring that certain individuals  
271 file certain information with the department at  
272 specified intervals; providing that a person may  
273 comply with certain provisions of state law by



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274 complying with certain provisions of federal law;  
275 providing for applicability of certain provisions of  
276 state law; requiring the collection and remittance of  
277 certain taxes; providing penalties for certain  
278 violations of state law; classifying certain property  
279 as contraband material; requiring the forfeiture of  
280 tobacco products under certain circumstances;  
281 authorizing the Attorney General, his or her designee,  
282 a state attorney, or any person holding a specified  
283 type of permit to bring certain actions in a court of  
284 this state; amending s. 210.18, F.S.; providing  
285 enhanced