



718376

LEGISLATIVE ACTION

Senate	.	House
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05/08/2009 12:02 PM	.	
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The Conference Committee on CS/CS/SB 1840, 1st Eng. recommended the following:

1 **Senate Conference Committee Amendment (with title**
2 **amendment)**

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4
5 Delete everything after the enacting clause
6 and insert:

7 Section 1. This act may be cited as the "Protecting
8 Florida's Health Act."

9 Section 2. Subsections (18) and (19) of section 210.01,
10 Florida Statutes, are amended to read:

11 210.01 Definitions.—When used in this part the following



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12 words shall have the meaning herein indicated:

13 (18) "Unstamped package" or "unstamped cigarettes" means a
14 package on which the surcharge and tax required by this part
15 have ~~has~~ not been paid, regardless of whether or not such
16 package is stamped or marked with the indicia of any other
17 taxing authority, or a package on which there has been affixed a
18 counterfeit or fraudulent indicium or stamp.

19 (19) "Stamp" or "stamps" means the indicia required to be
20 placed on cigarette packages which ~~that~~ evidence payment of the
21 surcharge on cigarettes under s. 210.011 and the tax on
22 cigarettes under s. 210.02.

23 Section 3. Section 210.011, Florida Statutes, is created to
24 read:

25 210.011 Cigarette surcharge levied; collection.-

26 (1) A surcharge, in addition to all other taxes of every
27 kind levied by law, is levied upon the sale, receipt, purchase,
28 possession, consumption, handling, distribution, and use of
29 cigarettes in this state, in the following amounts, except as
30 otherwise provided in subsections (2)-(5), for cigarettes of
31 standard dimensions:

32 (a) Upon all cigarettes weighing not more than 3 pounds per
33 thousand, 5 cents on each cigarette.

34 (b) Upon all cigarettes weighing more than 3 pounds per
35 thousand and not more than 6 inches long, 10 cents on each
36 cigarette.

37 (c) Upon all cigarettes weighing more than 3 pounds per
38 thousand and more than 6 inches long, 20 cents on each
39 cigarette.

40 (2) The descriptions of cigarettes contained in subsection



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41 (1) are declared to be standard as to dimensions for the purpose
42 of levying a surcharge as provided in this section. If any
43 cigarette is received, purchased, possessed, sold, offered for
44 sale, given away, or used which is of a size other than those
45 standard dimensions, the cigarette is subject to a surcharge at
46 the rate of 4.2 cents on each cigarette.

47 (3) When cigarettes as described in paragraph (1)(a) are
48 packed in varying quantities of 20 cigarettes or fewer, except
49 the manufacturer's free samples authorized under s. 210.04(9),
50 the following rates shall govern:

51 (a) Packages containing 10 cigarettes or fewer require a
52 surcharge of 50 cents.

53 (b) Packages containing more than 10 but not more than 20
54 cigarettes require a surcharge of \$1.

55 (4) When cigarettes as described in paragraph (1)(b) are
56 packed in varying quantities of 20 cigarettes or fewer, except
57 the manufacturer's free samples authorized under s. 210.04(9),
58 the following rates shall govern:

59 (a) Packages containing 10 cigarettes or fewer require a
60 surcharge of \$1.

61 (b) Packages containing more than 10 but not more than 20
62 cigarettes require a surcharge of \$2.

63 (5) When cigarettes as described in paragraph (1)(c) are
64 packed in varying quantities of 20 cigarettes or fewer, except
65 the manufacturer's free samples authorized under s. 210.04(9),
66 the following rates shall govern:

67 (a) Packages containing 10 cigarettes or fewer require a
68 surcharge of \$2.

69 (b) Packages containing more than 10 but not more than 20



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70 cigarettes require a surcharge of \$4.

71 (6) This surcharge shall be paid by the dealer to the
72 division for deposit and distribution as hereinafter provided
73 upon the first sale or transaction within the state, whether
74 such sale or transfer is to the ultimate purchaser or consumer.
75 The seller or dealer shall collect the surcharge from the
76 purchaser or consumer, and the purchaser or consumer shall pay
77 the surcharge to the seller. The seller or dealer is responsible
78 for the collection of the surcharge and payment of the surcharge
79 to the division. All surcharges are due not later than the 10th
80 day of the month following the calendar month in which they were
81 incurred, and thereafter shall bear interest at the rate of 1
82 percent per month. If the amount of surcharge due for a given
83 period is assessed without allocating it to any particular
84 month, the interest begins accruing on the date of the
85 assessment. Whenever cigarettes are shipped from outside the
86 state to anyone other than a distributing agent or wholesale
87 dealer, the person receiving the cigarettes is responsible for
88 the surcharge on the cigarettes and payment of the surcharge to
89 the division.

90 (7) It is the legislative intent that the surcharge on
91 cigarettes be uniform throughout the state.

92 (8) The surcharge levied under this section shall be
93 administered, collected, and enforced in the same manner as the
94 tax imposed under s. 210.02.

95 (9) Revenue produced from the surcharge levied under this
96 section shall be deposited into the Health Care Trust Fund
97 within the Agency for Health Care Administration.

98 Section 4. Subsection (9) of section 210.04, Florida



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99 Statutes, is amended to read:

100 210.04 Construction; exemptions; collection.—

101 (9) Agents, located within or without the state, shall
102 purchase stamps and affix such stamps in the manner prescribed
103 to packages or containers of cigarettes to be sold, distributed,
104 or given away within the state, in which case any dealer
105 subsequently receiving such stamped packages of cigarettes will
106 not be required to purchase and affix stamps on such packages of
107 cigarettes. However, the division may, in its discretion,
108 authorize manufacturers to distribute in the state free sample
109 packages of cigarettes containing not less than 2 or more than
110 20 cigarettes without affixing any surcharge and tax stamps
111 provided copies of shipping invoices on such cigarettes are
112 furnished, and payment of all surcharges and taxes imposed on
113 such cigarettes by law is made, directly to the division not
114 later than the 10th day of each calendar month. The surcharge
115 and tax on cigarettes in sample packages shall be based on a
116 unit in accordance with the surcharges levied under s.
117 210.011(1) and the taxing provisions of s. 210.02(1).

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

120 210.095 Mail order, Internet, and remote sales of tobacco
121 products; age verification.—

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

123 (a) “Adult” means an individual who is at least of the
124 legal minimum purchase age for tobacco products.

125 (b) “Consumer” means a person in this state who comes into
126 possession of any tobacco product subject to the tax imposed by
127 this chapter and who, at the time of possession, is not a



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128 distributor intending to sell or distribute the tobacco product,
129 a retailer, or a wholesaler.

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

132 1. The consumer submits the order for the sale by
133 telephonic or other voice transmission, mail, delivery service,
134 or the Internet or other online service; or

135 2. The tobacco products are delivered by use of mail or a
136 delivery service.

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

139 (e) "Legal minimum purchase age" means the minimum age at
140 which an individual may legally purchase tobacco products in
141 this state.

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

144 (g) "Retailer" means any person who is not a licensed
145 distributor but who is in possession of tobacco products subject
146 to tax under this chapter for the purposes of selling the
147 tobacco products to consumers.

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

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

154 (j) "Tobacco products" means all cigarettes, smoking
155 tobacco, snuff, fine-cut chewing tobacco, cut and granulated
156 tobacco, cavendish, and plug or twist tobacco.



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157 (2) (a) A sale of tobacco products constituting a delivery
158 sale pursuant to paragraph (1) (c) is a delivery sale regardless
159 of whether the person accepting the order for the delivery sale
160 is located inside or outside this state.

161 (b) A retailer must obtain a license from the division
162 pursuant to the requirements of this chapter before accepting an
163 order for a delivery sale.

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

166 (d) Each person accepting an order for a delivery sale must
167 comply with each of the following:

168 1. The age-verification requirements set forth in
169 subsection (3).

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

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

172 4. The registration and reporting requirements set forth in
173 subsection (6).

174 5. The tax collection requirements set forth in subsection
175 (7).

176 6. The licensing and tax stamp requirements set forth in
177 this chapter which apply to sales of tobacco products occurring
178 entirely in this state.

179 7. All laws of this state generally applicable to sales of
180 tobacco products occurring entirely in this state which impose
181 excise taxes and assessments.

182 (3) A person may not mail, ship, or otherwise deliver
183 tobacco products in connection with an order for a delivery sale
184 unless, before the first delivery to the consumer, the person
185 accepting the order for the delivery sale:



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186 (a) Obtains from the individual submitting the order a
187 certification that includes:

188 1. Reliable confirmation that the individual is an adult;
189 and

190 2. A statement signed by the individual in writing and
191 under penalty of perjury which:

192 a. Certifies the address and date of birth of the
193 individual; and

194 b. Confirms that the individual wants to receive delivery
195 sales from a tobacco company and understands that, under the
196 laws of this state, the following actions are illegal:

197 (I) Signing another individual's name to the certification;

198 (II) Selling tobacco products to individuals under the
199 legal minimum purchase age; and

200 (III) Purchasing tobacco products, if the person making the
201 purchase is under the legal minimum purchase age.

202 (b) Makes a good faith effort to verify the information
203 contained in the certification provided by the individual
204 pursuant to paragraph (a) against a commercially available
205 database that may be reasonably relied upon for accurate age
206 information or obtains a photocopy or other image of a valid
207 government-issued identification card stating the date of birth
208 or age of the individual.

209 (c) Provides to the individual, via electronic mail or
210 other means, a notice meeting the requirements of subsection
211 (4).

212 (d) If an order for tobacco products is made pursuant to an
213 advertisement on the Internet, receives payment for the delivery
214 sale from the consumer by a credit or debit card issued in the



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215 name of the consumer, or by personal or company check of the
216 consumer.

217 (e) Imposes a two-carton minimum on each order of
218 cigarettes, and requires payment for the purchase of any tobacco
219 product to be made by personal or company check of the purchaser
220 or the purchaser's credit card or debit card. Payment by money
221 order or cash may not be received or permitted. The person
222 accepting the order for delivery sale shall submit, to each
223 credit-card acquiring company with which the person has credit-
224 card sales, identification information in an appropriate form
225 and format so that the words "tobacco product" may be printed in
226 the purchaser's credit card statement when a purchase of a
227 tobacco product is made by credit card payment.

228 (f) Makes a telephone call after 5 p.m. to the purchaser
229 confirming the order before shipping the tobacco products. The
230 telephone call may be a person-to-person call or a recorded
231 message. The person accepting the order for delivery sale is not
232 required to speak directly with a person and may leave a message
233 on an answering machine or through voice mail.

234
235 In addition to the requirements of this subsection, a person
236 accepting an order for a delivery sale may request that a
237 consumer provide an electronic mail address.

238 (4) The notice described in paragraph (3)(c) must include
239 prominent and clearly legible statements that sales of tobacco
240 products are:

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

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



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244 (c) Taxable under this chapter.

245
246 The notice must include an explanation of how each tax has been,
247 or is to be, paid with respect to the delivery sale.

248 (5) Each person who mails, ships, or otherwise delivers
249 tobacco products in connection with an order for a delivery sale
250 must:

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

255 (b) Use a method of mailing, shipping, or delivery which
256 obligates the delivery service to require:

257 1. The individual submitting the order for the delivery
258 sale or another adult who resides at the individual's address to
259 sign his or her name to accept delivery of the shipping
260 container. Proof of the legal minimum purchase age of the
261 individual accepting delivery is required only if the individual
262 appears to be under 27 years of age.

263 2. Proof that the individual is either the addressee or the
264 adult designated by the addressee, in the form of a valid,
265 government-issued identification card bearing a photograph of
266 the individual who signs to accept delivery of the shipping
267 container.

268 (c) Provide to the delivery service, if such service is
269 used, evidence of full compliance with subsection (7).

270
271 If the person accepting a purchase order for a delivery sale
272 delivers the tobacco products without using a delivery service,



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273 the person must comply with all of the requirements of this
274 section which apply to a delivery service. Any failure to comply
275 with a requirement of this section constitutes a violation
276 thereof.

277 (6) (a) Before making sales or shipping tobacco products in
278 connection with sales, a person shall file with the division a
279 statement providing the person's name, trade name, and the
280 address of the person's principal place of business, as well as
281 any other place of business.

282 (b) No later than the 10th day of each month, each person
283 who has made a sale or mailed, shipped, or otherwise delivered
284 tobacco products in connection with any sale during the previous
285 calendar month shall file with the division a memorandum or a
286 copy of the invoice, providing for each sale:

287 1. The name and address of the individual who submitted the
288 order for the sale.

289 2. The name and address of the individual who accepted
290 delivery of the tobacco products.

291 3. The name and address of the person who accepted the
292 order for the sale of the tobacco products.

293 4. The name and address of the delivery service and the
294 name of the individual making the delivery.

295 5. The brand or brands of the tobacco products sold in the
296 sale.

297 6. The quantity of each brand of tobacco products sold in
298 the sale.

299 (c) A person may comply with the requirements of this
300 subsection by complying with the requirements of 15 U.S.C. s.
301 376.



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302 (d) This section does not apply to sales of tobacco
303 products by a licensed distributor or to sales of tobacco
304 products by a retailer purchased from a licensed distributor.

305 (7) Each person accepting a purchase order for a delivery
306 sale shall collect and remit to the division all taxes imposed
307 on tobacco products by this state with respect to the delivery
308 sale. With respect to cigarettes, the collection and remission
309 are not required if the person has obtained proof in the form of
310 the presence of applicable tax stamps or tax-exempt stamps, or
311 other proof that the taxes have already been paid to this state.

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

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

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

323 (b) A person who is an adult and knowingly submits a false
324 certification under subsection (3) commits a misdemeanor of the
325 first degree, punishable as provided in s. 775.082 or s.
326 775.083. For each offense, the person shall be fined \$10,000 or
327 five times the retail value of the tobacco products involved in
328 the violation, whichever is greater.

329 (c) A person who fails to pay any tax required in
330 connection with a delivery sale shall pay, in addition to any



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331 other penalty, a penalty of five times the retail value of the
332 tobacco products involved.

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

336 (e) A person who, in connection with a delivery sale,
337 delivers tobacco products on behalf of a delivery service to an
338 individual who is not an adult commits a misdemeanor of the
339 third degree, punishable as provided in s. 775.082 or s.
340 775.083.

341 (f) Any fixture, equipment, or other material or personal
342 property on the premises of any person who, with the intent to
343 defraud this state, mails or ships tobacco products into this
344 state and fails to satisfy any of the requirements of this
345 section is a contraband article within the definition of s.
346 932.701(2)(a)3.

347 (g) An individual who is not an adult and who knowingly
348 violates any provision of this section commits a misdemeanor of
349 the third degree, punishable as provided in s. 775.082 or s.
350 775.083.

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

356 Section 6. Subsection (6) of section 210.18, Florida
357 Statutes, is amended, and subsection (11) is added to that
358 section, to read:

359 210.18 Penalties for tax evasion; reports by sheriffs.—



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360 ~~(6) (a) Every person, firm, or corporation, other than a~~
361 ~~licensee under the provisions of this part, who possesses,~~
362 ~~removes, deposits, or conceals, or aids in the possessing,~~
363 ~~removing, depositing, or concealing of, any unstamped cigarettes~~
364 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~
365 ~~second degree, punishable as provided in s. 775.082 or s.~~
366 ~~775.083. In lieu of the penalties provided in those sections,~~
367 ~~however, the person, firm, or corporation may pay the tax plus a~~
368 ~~penalty equal to the amount of the tax authorized under s.~~
369 ~~210.02 on the unstamped cigarettes.~~

370 ~~(a) (b)~~ Every person, firm, or corporation, other than a
371 licensee under the provisions of this part, who possesses,
372 removes, deposits, or conceals, or aids in the possessing,
373 removing, depositing, or concealing of, any unstamped cigarettes
374 ~~in excess of 50 cartons~~ is presumed to have knowledge that they
375 have not been taxed and commits ~~is guilty of~~ a felony of the
376 third degree, punishable as provided in s. 775.082, s. 775.083,
377 or s. 775.084.

378 ~~(b) (e)~~ This section does not apply to a person possessing
379 not in excess of three cartons of such cigarettes purchased by
380 such possessor outside the state in accordance with the laws of
381 the place where purchased and brought into this state by such
382 possessor. The burden of proof that such cigarettes were
383 purchased outside the state and in accordance with the laws of
384 the place where purchased shall in all cases be upon the
385 possessor of such cigarettes.

386 (11) The division shall create a toll-free number for
387 reporting violations of this part. Upon a determination that a
388 violation has occurred, the informant who provided the



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389 information that led to the determination shall be paid a reward
390 of up to 50 percent of the fine levied and paid under this
391 section. A notice must be conspicuously displayed in every
392 location where cigarettes are sold which contains the following
393 provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW
394 PROHIBITS THE POSSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT
395 VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH
396 REWARD." This notice must be provided at the expense of the
397 retail dealer.

398 Section 7. Section 210.276, Florida Statutes, is created to
399 read:

400 210.276 Surcharge on tobacco products.-

401 (1) A surcharge is levied upon all tobacco products in this
402 state and upon any person engaged in business as a distributor
403 of tobacco products at the rate of 60 percent of the wholesale
404 sales price. The surcharge shall be levied at the time the
405 distributor:

406 (a) Brings or causes to be brought into this state from
407 without the state tobacco products for sale;

408 (b) Makes, manufactures, or fabricates tobacco products in
409 this state for sale in this state; or

410 (c) Ships or transports tobacco products to retailers in
411 this state, to be sold by those retailers. A surcharge may not
412 be levied on tobacco products shipped or transported outside
413 this state for sale or use outside this state.

414 (2) A surcharge is imposed upon the use or storage by
415 consumers of tobacco products in this state and upon such
416 consumers at the rate of 60 percent of the wholesale sales
417 price. The surcharge imposed by this subsection does not apply



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418 if the surcharge imposed by subsection (1) on such tobacco
419 products has been paid. This surcharge does not apply to the use
420 or storage of tobacco products in quantities of less than 1
421 pound in the possession of any one consumer.

422 (3) Any tobacco product with respect to which a surcharge
423 has once been imposed under this section is not again subject to
424 surcharge under this section.

425 (4) No surcharge shall be imposed by this section upon
426 tobacco products not within the taxing power of the state under
427 the Commerce Clause of the United States Constitution.

428 (5) The exemptions provided for cigarettes under s.
429 210.04(4) also apply to tobacco products subject to a surcharge
430 under this section.

431 (6) The surcharge levied under this section shall be
432 administered, collected, and enforced in the same manner as the
433 tax imposed under s. 210.30.

434 (7) Revenue produced from the surcharge levied under this
435 section shall be deposited into the Health Care Trust Fund
436 within the Agency for Health Care Administration.

437 Section 8. (1) The additional surcharges imposed by ss.
438 210.011 and 210.276, Florida Statutes, are levied upon existing
439 inventory on July 1, 2009. On July 1, 2009, each manufacturer,
440 distributing agent, wholesale dealer, retail dealer, as defined
441 in s. 210.01, Florida Statutes, and manufacturer, distributor,
442 and retailer, as defined in s. 210.25, Florida Statutes, in the
443 state shall take an inventory of the cigarettes and other
444 tobacco products in its possession before opening for business.
445 The amount of inventory shall be certified to the Division of
446 Alcoholic Beverages and Tobacco of the Department of Business



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447 and Professional Regulation on or before July 21, 2009, and
448 shall include documentation accompanied by certified check,
449 money order, or an electronic funds transfer for the amount of
450 the additional surcharge due on the inventory. For the purpose
451 of calculating the tax due by a retailer on the inventory of
452 tobacco products other than cigarettes under s. 210.276, Florida
453 Statutes, the wholesale sales price shall equal 75 percent of
454 the price paid by the retailer to a distributor or manufacturer.
455 The manufacturer, distributing agent, wholesale dealer, retail
456 dealer, distributor, or retailer may pay the surcharge in four
457 equal installments of 25 percent of the total amount due. If the
458 manufacturer, distributing agent, wholesale dealer, retail
459 dealer, distributor, or retailer chooses to pay in installments,
460 it must pay the first installment by July 21, 2009, along with
461 the required documentation; the second installment by August 10,
462 2009; the third installment by August 30, 2009; and the fourth
463 installment by September 9, 2009. Chapter 210, Florida Statutes,
464 relating to penalties and interest for delinquent payments,
465 applies to this section. The proceeds of the additional
466 surcharge on the existing inventory shall be deposited into the
467 Health Care Trust Fund within the Agency for Health Care
468 Administration.

469 (2) For the purpose of compensating each manufacturer,
470 distributing agent, wholesale dealer, retail dealer,
471 distributor, and retailer for taking an inventory of the
472 cigarettes and other tobacco products in its possession and
473 remitting the surcharge levied on these products, each
474 manufacturer, distributing agent, wholesale dealer, retail
475 dealer, distributor, and retailer may deduct 5 percent of the



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476 amount of the surcharge due and certified and remitted to the
477 Division of Alcoholic Beverages and Tobacco of the Department of
478 Business and Professional Regulation as a collection allowance.

479 (a) The collection allowance may not be granted, nor may
480 any deduction be permitted, if the required documentation or
481 surcharge is delinquent at the time of payment.

482 (b) The Division of Alcoholic Beverages and Tobacco of the
483 Department of Business and Professional Regulation may deny the
484 collection allowance if a manufacturer, distributing agent,
485 wholesale dealer, retail dealer, distributor, or retailer of
486 products files incomplete documentation. For the purposes of the
487 surcharge on inventory, a return is incomplete if it is lacking
488 the information necessary to ascertain the surcharge due.

489 Section 9. Subsection (5) of section 210.05, Florida
490 Statutes, is amended to read:

491 210.05 Preparation and sale of stamps; discount.-

492 (5) Cigarettes sold to the Seminole Indian Tribe of Florida
493 shall be administered as provided in s. 210.1801. ~~Agents or~~
494 ~~wholesale dealers may sell stamped but untaxed cigarettes to the~~
495 ~~Seminole Indian Tribe, or to members thereof, for retail sale.~~
496 ~~Agents or wholesale dealers shall treat such cigarettes and the~~
497 ~~sale thereof in the same manner, with respect to reporting and~~
498 ~~stamping, as other sales under this part, but agents or~~
499 ~~wholesale dealers shall not collect from the purchaser the tax~~
500 ~~imposed by s. 210.02. The purchaser hereunder shall be~~
501 ~~responsible to the agent or wholesale dealer for the services~~
502 ~~and expenses incurred in affixing the stamps and accounting~~
503 ~~therefor.~~

504 Section 10. Section 210.1801, Florida Statutes, is created



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505 to read:

506 210.1801 Exempt cigarettes for members of recognized Indian
507 tribes.-

508 (1) Notwithstanding any provision of this chapter to the
509 contrary, a member of an Indian tribe recognized in this state
510 who purchases cigarettes on an Indian reservation for his or her
511 own use is exempt from paying a cigarette tax and surcharge.
512 However, such member purchasing cigarettes outside of Indian
513 reservation or a nontribal member purchasing cigarettes on an
514 Indian reservation is not exempt from paying the cigarette tax
515 or surcharge when purchasing cigarettes within this state.
516 Accordingly, the tax and surcharge shall apply to all cigarettes
517 sold on an Indian reservation to a nontribal member, and
518 evidence of such tax or surcharge shall be by means of an
519 affixed cigarette tax and surcharge stamp.

520 (2) In order to ensure an adequate quantity of cigarettes
521 on Indian reservations which may be purchased by tribal members
522 who are exempt from the cigarette tax and surcharge, the
523 division shall provide recognized Indian tribes within this
524 state with Indian-tax-and-surcharge-exemption coupons as set
525 forth in this section. A reservation cigarette seller shall
526 present such Indian-tax-and-surcharge-exemption coupons to a
527 wholesale dealer licensed in this state in order to purchase
528 stamped cigarettes that are exempt from the imposition of the
529 cigarette tax and surcharge. A tribal member may purchase
530 cigarettes that are exempt from the cigarette tax and surcharge
531 from a reservation cigarette seller even though such cigarettes
532 have an affixed cigarette tax-and-surcharge stamp.

533 (3) Indian-tax-and-surcharge-exemption coupons shall be



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534 provided to the recognized governing body of each Indian tribe
535 to ensure that each Indian tribe can obtain cigarettes that are
536 exempt from the tax and surcharge which are for the use of the
537 tribe or its members. The Indian-tax-and-surcharge-exemption
538 coupons shall be provided to the Indian tribes quarterly. It is
539 intended that each Indian tribe will distribute the Indian-tax-
540 and-surcharge-exemption coupons to reservation cigarette sellers
541 on such tribe's reservation. Only Indian tribes or reservation
542 cigarette sellers on their reservations may redeem such Indian-
543 tax-and-surcharge-exemption coupons pursuant to this section.

544 (a) The number of Indian-tax-and-surcharge-exemption
545 coupons to be given to the recognized governing body of each
546 Indian tribe shall be based upon the probable demand of the
547 tribal members on the tribe's reservation plus the number needed
548 for official tribal use. The annual total number of Indian-tax-
549 and-surcharge-exemption coupons to be given to the recognized
550 governing body of each Indian tribe shall be calculated by
551 multiplying the number of members of the tribe times five packs
552 of cigarettes times 365.

553 (b) Each wholesale dealer shall keep records of
554 transactions involving Indian-tax-and surcharge-exemption
555 coupons and shall submit appropriate documentation to the
556 division when claiming a refund as set forth in this section.
557 Documentation must contain at least the following information:

558 1. The identity of the Indian tribe from which an Indian-
559 tax-and-surcharge-exemption coupon is received;

560 2. The identity and the quantity of the product for which
561 an Indian-tax-and-surcharge-exemption coupon is provided;

562 3. The date of issuance and the date of expiration of the



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563 Indian-tax-and-surcharge-exemption coupon; and

564 4. Any other information as the division may deem
565 appropriate.

566 (4) (a) An Indian tribe may purchase cigarettes for its own
567 official use from a wholesale dealer without payment of the
568 cigarette tax and surcharge to the extent that the Indian tribe
569 provides the wholesale dealer with Indian-tax-and-surcharge-
570 exemption coupons entitling the Indian tribe to purchase such
571 quantities of cigarettes as allowed by each Indian-tax-and-
572 surcharge-exemption coupon without paying the cigarette tax and
573 surcharge.

574 (b) A tribal member may purchase cigarettes for his or her
575 own use without payment of the cigarette tax and surcharge if
576 the tribal member makes such purchase on a qualified
577 reservation.

578 (c) A reservation cigarette seller may purchase cigarettes
579 for resale without payment of the cigarette tax from a wholesale
580 dealer licensed pursuant to this chapter:

581 1. If the reservation cigarette seller brings the
582 cigarettes or causes them to be delivered onto a qualified
583 reservation for resale on the reservation;

584 2. To the extent that the reservation cigarette seller
585 provides the wholesale dealer with Indian-tax-and-surcharge-
586 exemption coupons entitling the reservation cigarette seller to
587 purchase such quantities of cigarettes as allowed on each
588 Indian-tax-and-surcharge-exemption coupon without paying the
589 cigarette tax and surcharge; and

590 3. If the cigarettes are affixed with a cigarette tax and
591 surcharge stamp.



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592 (d) A wholesale dealer may not collect the cigarette tax
593 and surcharge from any purchaser if the purchaser gives the
594 dealer Indian-tax-and-surcharge-exemption coupons that entitle
595 the purchaser to purchase such quantities of cigarettes as
596 allowed on each such Indian-tax-and-surcharge-exemption coupon
597 without paying the cigarette tax and surcharge.

598 (5) A wholesale dealer who has one or more Indian-tax-and-
599 surcharge-exemption coupons may file a claim for a refund with
600 respect to any cigarette tax previously paid on cigarettes that
601 the wholesale dealer sold without collecting the tax because the
602 dealer accepted an Indian-tax-and-surcharge-exemption coupon
603 from a purchaser pursuant to this section.

604 (6) If an Indian tribe enters into an agreement with the
605 state and the Legislature approves such agreement regarding the
606 sale and distribution of cigarettes on the tribe's reservation,
607 the terms of the agreement take precedence over the provisions
608 of this section and exempt the tribe from the tax and surcharge
609 if the tax and surcharge are specifically addressed in the
610 agreement. The sale or distribution, including transportation,
611 of any cigarettes to the tribe's reservation shall be in
612 accordance with the provisions of the agreement. The agreement
613 must provide for revenue sharing between the tribe and the state
614 relating to the imposition and collection of the taxes imposed
615 by ss. 210.02 and 210.30 and the surcharges imposed by ss.
616 210.011 and 210.276 and must, at a minimum, provide for the
617 state to receive as revenue sharing from the tribe the full
618 amounts of the surcharges imposed by ss. 210.011 and 210.276.

619 Section 11. This act shall take effect July 1, 2009.
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621 ===== T I T L E A M E N D M E N T =====

622 And the title is amended as follows:

623 Delete everything before the enacting clause

624 and insert:

625 A bill to be entitled

626 An act relating to protecting Florida's health through
627 a surcharge on tobacco products; providing a short
628 title; amending s. 210.01, F.S.; redefining the terms
629 "unstamped package," "unstamped cigarettes," and
630 "stamp"; conforming provisions to changes made by the
631 act; creating s. 210.011, F.S.; levying a surcharge on
632 cigarettes equivalent to \$1 per standard pack;
633 establishing surcharge amounts for cigarettes of a
634 nonstandard size and in varying quantities; providing
635 legislative intent that the surcharge be uniform
636 throughout the state; providing for the surcharge to
637 be administered in the same manner as the cigarette
638 tax imposed under s. 210.02, F.S.; requiring that
639 revenue from the surcharge be deposited into the
640 Health Care Trust Fund within the Agency for Health
641 Care Administration; amending s. 210.04, F.S., to
642 conform; creating s. 210.095, F.S.; defining terms;
643 providing that certain transactions constitute a
644 delivery sale of tobacco products; requiring that a
645 cigarette retailer obtain a license before accepting
646 an order for a delivery sale; prohibiting the making
647 of a delivery sale to a person who is not an adult;
648 requiring that a person accepting an order for a
649 delivery sale comply with certain requirements;



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650 prohibiting the mailing, shipping, or delivery of
651 tobacco products in connection with an order for
652 delivery sale unless, before the first delivery to a
653 consumer, the person accepting the order takes certain
654 actions; authorizing a person accepting an order for
655 delivery sale to request that a consumer provide an e-
656 mail address; requiring the delivery of a notice to
657 consumers making orders for delivery sale; providing
658 requirements for such notice; requiring that each
659 person who mails, ships, or delivers tobacco products
660 in connection with an order for delivery sale fulfill
661 specified requirements; requiring that a person file a
662 statement containing certain information with the
663 Department of Business and Professional Regulation
664 before selling or shipping tobacco products; requiring
665 that certain individuals file certain information with
666 the Division of Alcoholic Beverages and Tobacco of the
667 Department of Business and Professional Regulation at
668 specified intervals; providing that a person may
669 comply with certain provisions of state law by
670 complying with specified provisions of federal law;
671 providing for applicability of certain provisions of
672 state law; requiring the collection and remittance of
673 certain taxes; providing penalties for certain
674 violations of state law; classifying certain property
675 as contraband material; requiring the forfeiture of
676 tobacco products under certain circumstances;
677 authorizing the Attorney General, his or her designee,
678 a state attorney, or any person holding a specified



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679 type of permit to bring certain actions in a court of
680 this state; amending s. 210.18, F.S.; creating a
681 reward program for information concerning violations
682 under part I of ch. 210, F.S.; creating s. 210.276,
683 F.S.; levying a surcharge on tobacco products other
684 than cigarettes; providing for the surcharge to be
685 administered in the same manner as the tax imposed
686 under part II of ch. 210, F.S.; requiring that revenue
687 from the surcharge be deposited into the Health Care
688 Trust Fund within the Agency for Health Care
689 Administration; providing for the surcharges on
690 cigarettes and other tobacco products to be levied
691 upon existing inventory on the effective date of the
692 act; requiring each manufacturer, distributing agent,
693 wholesale dealer, retail dealer, distributor, and
694 retailer to take an inventory of the cigarettes and
695 other tobacco products in its possession on the
696 effective date of the act; requiring that the amount
697 of inventory be certified to the Division of Alcoholic
698 Beverages and Tobacco of the Department of Business
699 and Professional Regulation by a specified date;
700 specifying criteria that a retailer must use to
701 calculate the tax on inventory of certain tobacco
702 products; authorizing the surcharge to be paid in four
703 equal installments; providing for penalties and
704 interest for delinquent payments; authorizing a
705 collection allowance for conducting the inventory and
706 remitting the tax on inventory of certain tobacco
707 products; amending s. 210.05, F.S.; conforming



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708 provisions to changes made by the act; creating s.
709 210.1801, F.S.; providing that certain members of an
710 Indian tribe recognized in this state are exempt from
711 paying a cigarette tax and surcharge under certain
712 conditions; providing that cigarettes sold on an
713 Indian reservation to a nontribal member are subject
714 to the tax and surcharge; providing that evidence of
715 such tax and surcharge is indicated by an affixed
716 cigarette tax and surcharge stamp; requiring the
717 Division of Alcoholic Beverages and Tobacco of the
718 Department of Business and Professional Regulation to
719 provide Indian-tax-and-surcharge-exemption coupons;
720 requiring a reservation cigarette seller to present
721 these coupons to a wholesale dealer in order to
722 purchase stamped cigarettes that are exempt from the
723 tax and surcharge; authorizing tribal members to
724 purchase stamped cigarettes that are exempt from the
725 tax and surcharge from reservation cigarette sellers;
726 authorizing the governing bodies of Indian tribes to
727 be provided with Indian-tax-and-surcharge-exemption
728 coupons; authorizing Indian tribes and reservation
729 cigarette sellers to redeem Indian-tax-and-surcharge-
730 exemption coupons; providing for the calculation of
731 the number of Indian-tax-and-surcharge-exemption
732 coupons to be provided; requiring wholesale dealers to
733 keep records of transactions involving Indian-tax-and-
734 surcharge-exemption coupons and to submit
735 documentation to the Division of Alcoholic Beverages
736 and Tobacco of the Department of Business and



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737 Professional Regulation; providing criteria for the
738 documentation; authorizing an Indian tribe, a tribal
739 member, and a reservation cigarette seller to purchase
740 cigarettes that are exempt from the tax and surcharge
741 from a wholesale dealer under certain conditions;
742 prohibiting a wholesaler from collecting the cigarette
743 tax when given Indian-tax-and-surcharge-exemption
744 coupons; authorizing a wholesale dealer to file a
745 claim for a refund with respect to a cigarette tax and
746 surcharge previously paid; providing that an approved
747 agreement between an Indian tribe and the state takes
748 precedence over s. 210.1801, F.S.; requiring that the
749 agreement provide for revenue sharing between the
750 tribe and the state; providing an effective date.

751
752 WHEREAS, the United States Surgeon General has found that
753 smoking causes lung cancer, heart disease, and emphysema, and

754 WHEREAS, the United States Surgeon General has found that
755 smoking by pregnant women may result in fetal injury, premature
756 birth, and low birth weight, and

757 WHEREAS, the United States Surgeon General has found that
758 tobacco smoke increases the risk of lung cancer and heart
759 disease, even in nonsmokers, and

760 WHEREAS, the United States Surgeon General has found that
761 smokeless tobacco may cause gum disease, tooth loss, and mouth
762 cancer, and

763 WHEREAS, the United States Surgeon General has found that
764 exposure to secondhand smoke causes respiratory symptoms in
765 children and slows their lung growth, and causes sudden infant



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766 death syndrome (SIDS), acute respiratory infections, ear
767 problems, and more frequent and severe asthma attacks in
768 children, and

769 WHEREAS, health care costs attributable to smoking-related
770 illness in Florida have been estimated to exceed \$6 billion
771 annually, and

772 WHEREAS, the direct Medicaid costs attributable to tobacco-
773 related illness in Florida have been estimated to exceed \$1.25
774 billion each year, and

775 WHEREAS, the Legislature finds that the cost of tobacco
776 usage should be recouped from those persons who engage in the
777 use of tobacco products through a surcharge upon the retail
778 purchase of cigarettes and other tobacco products, and

779 WHEREAS, the Legislature finds that the imposition of such
780 a surcharge will provide tax relief to Florida residents and
781 businesses that heretofore have been subject to exactions to pay
782 for the Medicaid costs attributable to the use of tobacco
783 products, NOW, THEREFORE,