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Proposed Committee Substitute by the Committee on Finance and  
Tax

1                                   A bill to be entitled  
2           An act relating to protecting Florida's health through  
3           a surcharge on tobacco products; providing a short  
4           title; amending s. 210.01, F.S.; redefining the terms  
5           "unstamped package," "unstamped cigarettes," and  
6           "stamp"; conforming provisions to changes made by the  
7           act; creating s. 210.011, F.S.; levying a surcharge on  
8           cigarettes equivalent to \$1 per standard pack;  
9           establishing surcharge amounts for cigarettes of a  
10          nonstandard sizes and in varying quantities; providing  
11          legislative intent that the surcharge be uniform  
12          throughout the state; providing for the surcharge to  
13          be administered in the same manner as the cigarette  
14          tax imposed under s. 210.02, F.S.; requiring that  
15          revenue from the surcharge to be deposited into the  
16          Health Care Trust Fund; amending s. 210.04, F.S., to  
17          conform; amending s. 210.18, F.S.; providing enhanced  
18          penalties for the sale or possession of any quantity  
19          of counterfeit cigarettes; creating a reward program  
20          for information concerning violations under part I of  
21          ch. 210, F.S.; amending s. 210.25, F.S.; clarifying  
22          provisions with respect to definitions; creating s.  
23          210.211, F.S.; providing definitions; levying a  
24          surcharge on tobacco products other than cigarettes;  
25          providing for the surcharge to be administered in the  
26          same manner as the tax imposed under part II of ch.  
27          210, F.S.; requiring that revenue from the surcharge



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28 be deposited into the Health Care Trust Fund;  
29 providing that the surcharge on cigarettes and other  
30 tobacco products applies to existing inventory on the  
31 effective date of the act; requiring each  
32 manufacturer, distributor, wholesaler, and vendor to  
33 take an inventory of the cigarettes and other tobacco  
34 products in its possession on the effective date of  
35 the act; requiring that the amount of such inventory  
36 be certified to the Division of Alcoholic Beverages  
37 and Tobacco of the Department of Business and  
38 Professional Regulation by a specified date; providing  
39 for penalties and interest for delinquent payments;  
40 providing an effective date.

41  
42 WHEREAS, the United States Surgeon General has found that  
43 smoking causes lung cancer, heart disease, and emphysema, and

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

47 WHEREAS, the United States Surgeon General has found that  
48 cigar smoking can cause cancers of the mouth and throat, and

49 WHEREAS, the United States Surgeon General has found that  
50 tobacco smoke increases the risk of lung cancer and heart  
51 disease, even in nonsmokers, and

52 WHEREAS, the United States Surgeon General has found that  
53 smokeless tobacco may cause gum disease, tooth loss, and mouth  
54 cancer, and

55 WHEREAS, the United States Surgeon General has found that  
56 secondhand smoke exposure causes respiratory symptoms in



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57 children and slows their lung growth, and causes sudden infant  
58 death syndrome (SIDS), acute respiratory infections, ear  
59 problems, and more frequent and severe asthma attacks in  
60 children, and

61 WHEREAS, health care costs attributable to smoking-related  
62 illness in Florida have been estimated to exceed \$6 billion  
63 annually, and

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

67 WHEREAS, the Legislature finds that the cost of tobacco  
68 usage should be recouped from those persons who engage in the  
69 use of tobacco products through a surcharge upon the retail  
70 purchase of cigarettes and other tobacco products, and

71 WHEREAS, the Legislature finds that the imposition of such  
72 a surcharge will provide tax relief to Florida residents and  
73 businesses that heretofore have been subject to exactions to pay  
74 for the Medicaid costs attributable to the use of tobacco  
75 products, NOW, THEREFORE,

76  
77 Be It Enacted by the Legislature of the State of Florida:

78  
79 Section 1. This act may be cited as the "Protecting  
80 Florida's Health Act."

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

83 210.01 Definitions.—When used in this part the following  
84 words shall have the meaning herein indicated:

85 (18) "Unstamped package" or "unstamped cigarettes" means a



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86 package on which the surcharge and tax required by this part  
87 have ~~has~~ not been paid, regardless of whether or not such  
88 package is stamped or marked with the indicia of any other  
89 taxing authority, or a package on which there has been affixed a  
90 counterfeit or fraudulent indicium or stamp.

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

95 Section 3. Section 210.011, Florida Statutes, is created to  
96 read:

97 210.011 Cigarette surcharge levied; collection.-

98 (1) A surcharge, in addition to all other taxes of every  
99 kind levied by law, is levied upon the sale, receipt, purchase,  
100 possession, consumption, handling, distribution, and use of  
101 cigarettes in this state, in the following amounts, except as  
102 otherwise provided in subsections (2) and (3), for cigarettes of  
103 standard dimensions:

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

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

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

112 (2) The descriptions of cigarettes contained in subsection  
113 (1) are declared to be standard as to dimensions for the purpose  
114 of levying a surcharge as provided in this section and if any



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115 cigarette is received, purchased, possessed, sold, offered for  
116 sale, given away, or used which is of a size other than those  
117 standard dimensions, the cigarette is subject to a surcharge at  
118 the rate of 4.2 cents on each such cigarette.

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

123 (a) Packages containing 10 cigarettes or fewer require a  
124 surcharge of 50 cents.

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

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

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

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

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

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

141 (b) Packages containing more than 10 but not more than 20  
142 cigarettes require a surcharge of \$4.

143 (6) This surcharge shall be paid by the dealer to the



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144 division for deposit and distribution as hereinafter provided  
145 upon the first sale or transaction within the state, whether or  
146 not such sale or transfer is to the ultimate purchaser or  
147 consumer. The seller or dealer shall collect the surcharge from  
148 the purchaser or consumer, and the purchaser or consumer shall  
149 pay the surcharge to the seller. The seller or dealer is  
150 responsible for the collection of the surcharge and payment of  
151 the surcharge to the division. All surcharges are due not later  
152 than the 10th day of the month following the calendar month in  
153 which they were incurred, and thereafter shall bear interest at  
154 the rate of 1 percent per month. If the amount of surcharge due  
155 for a given period is assessed without allocating it to any  
156 particular month, the interest begins accruing on the date of  
157 the assessment. Whenever cigarettes are shipped from outside the  
158 state to anyone other than a distributing agent or wholesale  
159 dealer, the person receiving the cigarettes is responsible for  
160 the surcharge on the cigarettes and payment of the surcharge to  
161 the division.

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

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

167 (9) Revenue produced from the surcharge levied under this  
168 section shall be deposited into the Health Care Trust Fund.

169 Section 4. Subsection (9) of section 210.04, Florida  
170 Statutes, is amended to read:

171 210.04 Construction; exemptions; collection.—

172 (9) Agents, located within or without the state, shall



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173 purchase stamps and affix such stamps in the manner prescribed  
174 to packages or containers of cigarettes to be sold, distributed,  
175 or given away within the state, in which case any dealer  
176 subsequently receiving such stamped packages of cigarettes will  
177 not be required to purchase and affix stamps on such packages of  
178 cigarettes. However, the division may, in its discretion,  
179 authorize manufacturers to distribute in the state free sample  
180 packages of cigarettes containing not less than 2 or more than  
181 20 cigarettes without affixing any surcharge and tax stamps  
182 provided copies of shipping invoices on such cigarettes are  
183 furnished, and payment of all surcharges and taxes imposed on  
184 such cigarettes by law is made, directly to the division not  
185 later than the 10th day of each calendar month. The surcharge  
186 and tax on cigarettes in sample packages shall be based on a  
187 unit in accordance with the surcharges levied under s.  
188 210.011(1) and the taxing provisions of s. 210.02(1).

189 Section 5. Subsections (6) and (9) of section 210.18,  
190 Florida Statutes, are amended, and subsection (10) is added to  
191 that section, to read:

192 210.18 Penalties for tax evasion; reports by sheriffs.—

193 ~~(6)(a) Every person, firm, or corporation, other than a~~  
194 ~~licensee under the provisions of this part, who possesses,~~  
195 ~~removes, deposits, or conceals, or aids in the possessing,~~  
196 ~~removing, depositing, or concealing of, any unstamped cigarettes~~  
197 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~  
198 ~~second degree, punishable as provided in s. 775.082 or s.~~  
199 ~~775.083. In lieu of the penalties provided in those sections,~~  
200 ~~however, the person, firm, or corporation may pay the tax plus a~~  
201 ~~penalty equal to the amount of the tax authorized under s.~~



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202 ~~210.02 on the unstamped cigarettes.~~

203       ~~(a)~~ ~~(b)~~ Every person, firm, or corporation, other than a  
204 licensee under the provisions of this part, who possesses,  
205 removes, deposits, or conceals, or aids in the possessing,  
206 removing, depositing, or concealing of, any unstamped cigarettes  
207 ~~in excess of 50 cartons~~ is presumed to have knowledge that they  
208 have not been taxed and commits ~~is guilty of~~ a felony of the  
209 third degree, punishable as provided in s. 775.082, s. 775.083,  
210 or s. 775.084.

211       ~~(b)~~ ~~(e)~~ This section does not apply to a person possessing  
212 not in excess of three cartons of such cigarettes purchased by  
213 such possessor outside the state in accordance with the laws of  
214 the place where purchased and brought into this state by such  
215 possessor. The burden of proof that such cigarettes were  
216 purchased outside the state and in accordance with the laws of  
217 the place where purchased shall in all cases be upon the  
218 possessor of such cigarettes.

219       (9) Notwithstanding any other provision of law, the sale or  
220 possession for sale of counterfeit cigarettes by any person or  
221 by a manufacturer, importer, distributing agent, wholesale  
222 dealer, or retail dealer shall result in the seizure of the  
223 product and related machinery by the division or any law  
224 enforcement agency, and shall be punishable as follows:-

225       (a)1. A first violation involving a total quantity of fewer  
226 than two cartons of cigarettes or the equivalent amount of other  
227 cigarettes is punishable by a fine not to exceed \$1,000 or five  
228 times the retail value of the cigarettes involved, whichever is  
229 greater, or imprisonment not to exceed 5 years, or both.

230       2. A second or subsequent violation involving a total





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231 quantity of fewer than two cartons of cigarettes or the  
232 equivalent amount of other cigarettes is punishable by a fine  
233 not to exceed \$5,000 or five times the retail value of the  
234 cigarettes involved, whichever is greater, or imprisonment not  
235 to exceed 5 years, or both, and shall also result in the  
236 revocation by the division of the permit of the manufacturer,  
237 importer, distributing agent, wholesale dealer, or retail  
238 dealer.

239 (b)1. A first violation involving a total quantity of two  
240 or more cartons of cigarettes or the equivalent amount of other  
241 cigarettes is punishable by a fine not to exceed \$2,000 or five  
242 times the retail value of the cigarettes involved, whichever is  
243 greater, or imprisonment not to exceed 5 years, or both.

244 2. A second or subsequent violation involving a quantity of  
245 two or more cartons of cigarettes or the equivalent amount of  
246 other cigarettes is punishable by a fine not to exceed \$50,000  
247 or five times the retail value of the cigarettes involved,  
248 whichever is greater, or imprisonment not to exceed 5 years, or  
249 both, and shall result in the revocation by the division of the  
250 permit of the manufacturer, importer, distributing agent,  
251 wholesale dealer, or retail dealer.

252 (10) The division shall create a toll-free number for  
253 reporting violations of this part. Upon a determination that a  
254 violation has occurred, the division shall pay the informant a  
255 reward of up to 50 percent of the fine levied and paid under  
256 this section. A notice must be conspicuously displayed in every  
257 location where cigarettes are sold which contains the following  
258 provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW  
259 PHOIBITS THE POSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT



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260 VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH  
261 REWARD." This notice must be provided at the expense of the  
262 retail dealer.

263 Section 6. Section 210.25, Florida Statutes, is amended to  
264 read:

265 210.25 Definitions.—As used in this part unless otherwise  
266 provided:

267 (1) "Business" means any trade, occupation, activity, or  
268 enterprise engaged in for the purpose of selling or distributing  
269 tobacco products in this state.

270 (2) "Consumer" means any person who has title to or  
271 possession of tobacco products in storage for use or other  
272 consumption in this state.

273 (3) "Division" means the Division of Alcoholic Beverages  
274 and Tobacco of the Department of Business and Professional  
275 Regulation.

276 (4) "Distributor" means:

277 (a) Any person engaged in the business of selling tobacco  
278 products in this state who brings, or causes to be brought, into  
279 this state from outside the state any tobacco products for sale;

280 (b) Any person who makes, manufactures, or fabricates  
281 tobacco products in this state for sale in this state; or

282 (c) Any person engaged in the business of selling tobacco  
283 outside this state who ships or transports tobacco products to  
284 retailers in this state to be sold by those retailers.

285 (5) "Manufacturer" means any person who manufactures and  
286 sells tobacco products.

287 (6) "Place of business" means any place where tobacco  
288 products are sold, manufactured, stored or kept for the purpose



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289 of sale or consumption, including any vessel, vehicle, airplane,  
290 train, or vending machine.

291 (7) "Retail outlet" means each place of business from which  
292 tobacco products are sold to consumers.

293 (8) "Retailer" means any person engaged in the business of  
294 selling tobacco products to ultimate consumers.

295 (9) "Sale" means any transfer, exchange, or barter for a  
296 consideration. The term "sale" includes a gift by a person  
297 engaged in the business of selling tobacco products for  
298 advertising or as a means of evading this part or for any other  
299 purpose.

300 (10) "Storage" means any keeping or retention of tobacco  
301 products for use or consumption in this state.

302 (11) "Tobacco products" means loose tobacco suitable for  
303 smoking; snuff; snuff flour; cavendish; plug and twist tobacco;  
304 fine cuts and other chewing tobaccos; shorts; refuse scraps;  
305 clippings, cuttings, and sweepings of tobacco, and other kinds  
306 and forms of tobacco prepared in such manner as to be suitable  
307 for chewing; but "tobacco products" does not include cigarettes,  
308 as defined by s. 210.01(1), or cigars.

309 (12) "Use" means the exercise of any right or power  
310 incidental to the ownership of tobacco products.

311 (13) "Wholesale sales price" means the established price  
312 for which a manufacturer sells a tobacco product to a  
313 distributor, exclusive of any diminution by volume or other  
314 discounts.

315 Section 7. Section 210.211, Florida Statutes, is created to  
316 read:

317 210.211 Surcharge on tobacco products.-



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318       (1) For the purposes of this section, the term "tobacco  
319 products" means cigars, loose tobacco suitable for smoking;  
320 snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts  
321 and other chewing tobaccos; shorts; refuse scraps; clippings,  
322 cuttings, and sweepings of tobacco, and other kinds and forms of  
323 tobacco prepared in such manner as to be suitable for chewing;  
324 but "tobacco products" does not include cigarettes, as defined  
325 by s. 210.01(1).

326       (2) A surcharge is levied upon all tobacco products in this  
327 state and upon any person engaged in business as a distributor  
328 thereof at the rate of \$1 for each ounce, with a proportionate  
329 surcharge at the same rate on all fractions of an ounce thereof,  
330 of such tobacco products, except that cigars weighing not more  
331 than 3 pounds per thousand shall be subject to the surcharge  
332 levied on cigarettes under s. 210.011(1)(a). The surcharge shall  
333 be levied at the time the distributor:

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

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

338       (c) Ships or transports tobacco products to retailers in  
339 this state, to be sold by those retailers.

340       (3) A surcharge is imposed upon the use or storage by  
341 consumers of tobacco products in this state and upon such  
342 consumers at the rate of \$1 for each ounce, with a proportionate  
343 surcharge at the same rate on all fractions of an ounce thereof.  
344 The surcharge imposed by this subsection does not apply if the  
345 surcharge imposed by subsection (2) on such tobacco products has  
346 been paid. This surcharge does not apply to the use or storage



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347 of tobacco products in quantities of less than 1 pound in the  
348 possession of any one consumer.

349 (4) Any tobacco product with respect to which a surcharge  
350 has once been imposed under this section is not again subject to  
351 surcharge under this section.

352 (5) No surcharge shall be imposed by this section upon  
353 tobacco products not within the taxing power of the state under  
354 the Commerce Clause of the United States Constitution.

355 (6) The exemptions provided for cigarettes under s.  
356 210.04(4) also apply to tobacco products subject to a surcharge  
357 under this section.

358 (7) The surcharge levied under this section shall be  
359 administered, collected, and enforced in the same manner as the  
360 tax imposed under s. 210.30.

361 (8) Revenue produced from the surcharge levied under this  
362 section shall be deposited into the Health Care Trust Fund.

363 Section 8. The additional surcharges imposed by ss. 210.011  
364 and 210.211, Florida Statutes, apply to existing inventory as of  
365 July 1, 2009. On July 1, 2009, each manufacturer, distributor,  
366 wholesaler, and vendor in the state shall take an inventory of  
367 the cigarettes and other tobacco products in its possession  
368 before opening for business. The amount of inventory shall be  
369 certified to the Division of Alcoholic Beverages and Tobacco of  
370 the Department of Business and Professional Regulation on or  
371 before July 21, 2009, and shall include documentation  
372 accompanied by certified check, money order, or an electronic  
373 funds transfer for the amount of the additional surcharge due on  
374 the inventory. Chapter 210, Florida Statutes, relating to  
375 penalties and interest for delinquent payments applies to this



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376 section. The proceeds of the additional surcharge on the  
377 existing inventory shall be deposited into the Health Care Trust  
378 Fund.

379 Section 9. This act shall take effect July 1, 2009.