

By the Committee on Finance and Tax; and Senators Deutch and Rich

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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
28 be deposited into the Health Care Trust Fund;
29 providing that the surcharge on cigarettes and other

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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
57 children and slows their lung growth, and causes sudden infant
58 death syndrome (SIDS), acute respiratory infections, ear

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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
86 package on which the surcharge and tax required by this part
87 have ~~has~~ not been paid, regardless of whether or not such

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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
115 cigarette is received, purchased, possessed, sold, offered for
116 sale, given away, or used which is of a size other than those

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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
144 division for deposit and distribution as hereinafter provided
145 upon the first sale or transaction within the state, whether or

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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
173 purchase stamps and affix such stamps in the manner prescribed
174 to packages or containers of cigarettes to be sold, distributed,

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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 surcharges 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.~~
202 ~~210.02 on the unstamped cigarettes.~~

203 (a)(b) Every person, firm, or corporation, other than a

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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
231 quantity of fewer than two cartons of cigarettes or the
232 equivalent amount of other cigarettes is punishable by a fine

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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 PHOHIBITS THE POSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT
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

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

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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.-

318 (1) For the purposes of this section, the term "tobacco
319 products" means cigars, loose tobacco suitable for smoking;

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

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

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378 Fund.

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