

By the Policy and Steering Committee on Ways and Means; 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 within the Agency for Health  
17          Care Administration; amending s. 210.04, F.S., to  
18          conform; amending s. 210.18, F.S.; providing enhanced  
19          penalties for the sale or possession of any quantity  
20          of counterfeit cigarettes; creating a reward program  
21          for information concerning violations under part I of  
22          ch. 210, F.S.; amending s. 210.25, F.S.; clarifying  
23          provisions with respect to definitions; creating s.  
24          210.211, F.S.; providing definitions; levying a  
25          surcharge on tobacco products other than cigarettes;  
26          providing for the surcharge to be administered in the  
27          same manner as the tax imposed under part II of ch.  
28          210, F.S.; requiring that revenue from the surcharge  
29          be deposited into the Health Care Trust Fund within

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30 the Agency for Health Care Administration; providing  
31 that the surcharge on cigarettes and other tobacco  
32 products applies to existing inventory on the  
33 effective date of the act; requiring each  
34 manufacturer, distributor, wholesaler, and vendor to  
35 take an inventory of the cigarettes and other tobacco  
36 products in its possession on the effective date of  
37 the act; requiring that the amount of such inventory  
38 be certified to the Division of Alcoholic Beverages  
39 and Tobacco of the Department of Business and  
40 Professional Regulation by a specified date; providing  
41 that the surcharge may be paid in four equal  
42 installments; providing for penalties and interest for  
43 delinquent payments; amending s. 210.05, F.S.;  
44 conforming provisions to changes made by the act;  
45 creating s. 210.1801, F.S.; providing for the  
46 administration of Indian-stamped cigarettes and other  
47 tobacco products; providing that agents of the  
48 Division of Alcoholic Beverages and Tobacco of the  
49 Department of Business and Professional Regulation or  
50 wholesale dealers may sell stamped but untaxed  
51 cigarettes and tobacco products to the Seminole Indian  
52 Tribe of Florida and the Miccosukee Tribe of Florida  
53 Indians for retail sale to tribal members; prohibiting  
54 an agent or wholesale dealer from collecting from the  
55 purchaser certain taxes or surcharges imposed by law;  
56 requiring that cigarette and other tobacco product  
57 stamps identify the tribe, or member thereof, to which  
58 the cigarettes are sold; providing for criminal

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59 penalties; providing for a fine; requiring the  
60 division to conduct a public-awareness campaign  
61 relating to the criminal possession of Indian  
62 cigarettes or Indian tobacco products by nontribal  
63 members; providing for the content of the notice  
64 required by law; requiring law enforcement agencies to  
65 report the seizure of Indian cigarettes or Indian  
66 tobacco products by nontribal members; providing for  
67 an exemption applicable to signatories of an approved  
68 compact that provides for revenue sharing between the  
69 tribe and the state; providing for an appropriation;  
70 providing an effective date.

71  
72 WHEREAS, the United States Surgeon General has found that  
73 smoking causes lung cancer, heart disease, and emphysema, and

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

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

79 WHEREAS, the United States Surgeon General has found that  
80 tobacco smoke increases the risk of lung cancer and heart  
81 disease, even in nonsmokers, and

82 WHEREAS, the United States Surgeon General has found that  
83 smokeless tobacco may cause gum disease, tooth loss, and mouth  
84 cancer, and

85 WHEREAS, the United States Surgeon General has found that  
86 secondhand smoke exposure causes respiratory symptoms in  
87 children and slows their lung growth, and causes sudden infant

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88 death syndrome (SIDS), acute respiratory infections, ear  
89 problems, and more frequent and severe asthma attacks in  
90 children, and

91 WHEREAS, health care costs attributable to smoking-related  
92 illness in Florida have been estimated to exceed \$6 billion  
93 annually, and

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

97 WHEREAS, the Legislature finds that the cost of tobacco  
98 usage should be recouped from those persons who engage in the  
99 use of tobacco products through a surcharge upon the retail  
100 purchase of cigarettes and other tobacco products, and

101 WHEREAS, the Legislature finds that the imposition of such  
102 a surcharge will provide tax relief to Florida residents and  
103 businesses that heretofore have been subject to exactions to pay  
104 for the Medicaid costs attributable to the use of tobacco  
105 products, NOW, THEREFORE,

106

107 Be It Enacted by the Legislature of the State of Florida:

108

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

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

113 210.01 Definitions.—When used in this part the following  
114 words shall have the meaning herein indicated:

115 (18) "Unstamped package" or "unstamped cigarettes" means a  
116 package on which the surcharge and tax required by this part

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117 have ~~has~~ not been paid, regardless of whether or not such  
118 package is stamped or marked with the indicia of any other  
119 taxing authority, or a package on which there has been affixed a  
120 counterfeit or fraudulent indicium or stamp.

121 (19) "Stamp" or "stamps" means the indicia required to be  
122 placed on cigarette packages which ~~that~~ evidence payment of the  
123 surchARGE on cigarettes under s. 210.011 and the tax on  
124 cigarettes under s. 210.02.

125 Section 3. Section 210.011, Florida Statutes, is created to  
126 read:

127 210.011 Cigarette surcharge levied; collection.-

128 (1) A surcharge, in addition to all other taxes of every  
129 kind levied by law, is levied upon the sale, receipt, purchase,  
130 possession, consumption, handling, distribution, and use of  
131 cigarettes in this state, in the following amounts, except as  
132 otherwise provided in subsections (2) and (3), for cigarettes of  
133 standard dimensions:

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

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

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

142 (2) The descriptions of cigarettes contained in subsection  
143 (1) are declared to be standard as to dimensions for the purpose  
144 of levying a surcharge as provided in this section and if any  
145 cigarette is received, purchased, possessed, sold, offered for

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146 sale, given away, or used which is of a size other than those  
147 standard dimensions, the cigarette is subject to a surcharge at  
148 the rate of 4.2 cents on each such cigarette.

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

153 (a) Packages containing 10 cigarettes or fewer require a  
154 surcharge of 50 cents.

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

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

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

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

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

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

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

173 (6) This surcharge shall be paid by the dealer to the  
174 division for deposit and distribution as hereinafter provided

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175 upon the first sale or transaction within the state, whether or  
176 not such sale or transfer is to the ultimate purchaser or  
177 consumer. The seller or dealer shall collect the surcharge from  
178 the purchaser or consumer, and the purchaser or consumer shall  
179 pay the surcharge to the seller. The seller or dealer is  
180 responsible for the collection of the surcharge and payment of  
181 the surcharge to the division. All surcharges are due not later  
182 than the 10th day of the month following the calendar month in  
183 which they were incurred, and thereafter shall bear interest at  
184 the rate of 1 percent per month. If the amount of surcharge due  
185 for a given period is assessed without allocating it to any  
186 particular month, the interest begins accruing on the date of  
187 the assessment. Whenever cigarettes are shipped from outside the  
188 state to anyone other than a distributing agent or wholesale  
189 dealer, the person receiving the cigarettes is responsible for  
190 the surcharge on the cigarettes and payment of the surcharge to  
191 the division.

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

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

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

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

202 210.04 Construction; exemptions; collection.—

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

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204 purchase stamps and affix such stamps in the manner prescribed  
205 to packages or containers of cigarettes to be sold, distributed,  
206 or given away within the state, in which case any dealer  
207 subsequently receiving such stamped packages of cigarettes will  
208 not be required to purchase and affix stamps on such packages of  
209 cigarettes. However, the division may, in its discretion,  
210 authorize manufacturers to distribute in the state free sample  
211 packages of cigarettes containing not less than 2 or more than  
212 20 cigarettes without affixing any surcharge and tax stamps  
213 provided copies of shipping invoices on such cigarettes are  
214 furnished, and payment of all surcharges and taxes imposed on  
215 such cigarettes by law is made, directly to the division not  
216 later than the 10th day of each calendar month. The surcharge  
217 and tax on cigarettes in sample packages shall be based on a  
218 unit in accordance with the surcharges levied under s.  
219 210.011(1) and the taxing provisions of s. 210.02(1).

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

223 210.18 Penalties for tax evasion; reports by sheriffs.—

224 ~~(6)(a) Every person, firm, or corporation, other than a~~  
225 ~~licensee under the provisions of this part, who possesses,~~  
226 ~~removes, deposits, or conceals, or aids in the possessing,~~  
227 ~~removing, depositing, or concealing of, any unstamped cigarettes~~  
228 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~  
229 ~~second degree, punishable as provided in s. 775.082 or s.~~  
230 ~~775.083. In lieu of the penalties provided in those sections,~~  
231 ~~however, the person, firm, or corporation may pay the tax plus a~~  
232 ~~penalty equal to the amount of the tax authorized under s.~~



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233 ~~210.02 on the unstamped cigarettes.~~

234 ~~(a)(b)~~ Every person, firm, or corporation, other than a  
235 licensee under the provisions of this part, who possesses,  
236 removes, deposits, or conceals, or aids in the possessing,  
237 removing, depositing, or concealing of, any unstamped cigarettes  
238 ~~in excess of 50 cartons~~ is presumed to have knowledge that they  
239 have not been taxed and commits ~~is guilty of~~ a felony of the  
240 third degree, punishable as provided in s. 775.082, s. 775.083,  
241 or s. 775.084.

242 ~~(b)(e)~~ This section does not apply to a person possessing  
243 not in excess of three cartons of such cigarettes purchased by  
244 such possessor outside the state in accordance with the laws of  
245 the place where purchased and brought into this state by such  
246 possessor. The burden of proof that such cigarettes were  
247 purchased outside the state and in accordance with the laws of  
248 the place where purchased shall in all cases be upon the  
249 possessor of such cigarettes.

250 (9) Notwithstanding any other provision of law, the sale or  
251 possession for sale of counterfeit cigarettes by any person or  
252 by a manufacturer, importer, distributing agent, wholesale  
253 dealer, or retail dealer shall result in the seizure of the  
254 product and related machinery by the division or any law  
255 enforcement agency, and shall be punishable as follows:-

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

261 2. A second or subsequent violation involving a total

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262 quantity of fewer than two cartons of cigarettes or the  
263 equivalent amount of other cigarettes is punishable by a fine  
264 not to exceed \$5,000 or five times the retail value of the  
265 cigarettes involved, whichever is greater, or imprisonment not  
266 to exceed 5 years, or both, and shall also result in the  
267 revocation by the division of the permit of the manufacturer,  
268 importer, distributing agent, wholesale dealer, or retail  
269 dealer.

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

275 2. A second or subsequent violation involving a quantity of  
276 two or more cartons of cigarettes or the equivalent amount of  
277 other cigarettes is punishable by a fine not to exceed \$50,000  
278 or five times the retail value of the cigarettes involved,  
279 whichever is greater, or imprisonment not to exceed 5 years, or  
280 both, and shall result in the revocation by the division of the  
281 permit of the manufacturer, importer, distributing agent,  
282 wholesale dealer, or retail dealer.

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

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

294 Section 6. Section 210.25, Florida Statutes, is amended to  
295 read:

296 210.25 Definitions.—As used in this part unless otherwise  
297 provided:

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

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

304 (3) "Division" means the Division of Alcoholic Beverages  
305 and Tobacco of the Department of Business and Professional  
306 Regulation.

307 (4) "Distributor" means:

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

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

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

316 (5) "Manufacturer" means any person who manufactures and  
317 sells tobacco products.

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

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320 of sale or consumption, including any vessel, vehicle, airplane,  
321 train, or vending machine.

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

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

326 (9) "Sale" means any transfer, exchange, or barter for a  
327 consideration. The term "sale" includes a gift by a person  
328 engaged in the business of selling tobacco products for  
329 advertising or as a means of evading this part or for any other  
330 purpose.

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

333 (11) "Tobacco products" means loose tobacco suitable for  
334 smoking; snuff; snuff flour; cavendish; plug and twist tobacco;  
335 fine cuts and other chewing tobaccos; shorts; refuse scraps;  
336 clippings, cuttings, and sweepings of tobacco, and other kinds  
337 and forms of tobacco prepared in such manner as to be suitable  
338 for chewing; but "tobacco products" does not include cigarettes,  
339 as defined by s. 210.01(1), or cigars.

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

342 (13) "Wholesale sales price" means the established price  
343 for which a manufacturer sells a tobacco product to a  
344 distributor, exclusive of any diminution by volume or other  
345 discounts.

346 Section 7. Section 210.211, Florida Statutes, is created to  
347 read:

348 210.211 Surcharge on tobacco products.-

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349       (1) For the purposes of this section, the term "tobacco  
350 products" means cigars, loose tobacco suitable for smoking;  
351 snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts  
352 and other chewing tobaccos; shorts; refuse scraps; clippings,  
353 cuttings, and sweepings of tobacco, and other kinds and forms of  
354 tobacco prepared in such manner as to be suitable for chewing;  
355 but "tobacco products" does not include cigarettes, as defined  
356 by s. 210.01(1).

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

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

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

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

371       (3) A surcharge is imposed upon the use or storage by  
372 consumers of tobacco products in this state and upon such  
373 consumers at the rate of \$1 for each ounce, with a proportionate  
374 surcharge at the same rate on all fractions of an ounce thereof.  
375 The surcharge imposed by this subsection does not apply if the  
376 surcharge imposed by subsection (2) on such tobacco products has  
377 been paid. This surcharge does not apply to the use or storage

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378 of tobacco products in quantities of less than 1 pound in the  
379 possession of any one consumer.

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

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

386 (6) The exemptions provided for cigarettes under s.  
387 210.04(4) also apply to tobacco products subject to a surcharge  
388 under this section.

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

392 (8) Revenue produced from the surcharge levied under this  
393 section shall be deposited into the Health Care Trust Fund  
394 within the Agency for Health Care Administration.

395 Section 8. The additional surcharges imposed by ss. 210.011  
396 and 210.211, Florida Statutes, apply to existing inventory as of  
397 July 1, 2009. On July 1, 2009, each manufacturer, distributor,  
398 wholesaler, and vendor in the state shall take an inventory of  
399 the cigarettes and other tobacco products in its possession  
400 before opening for business. The amount of inventory shall be  
401 certified to the Division of Alcoholic Beverages and Tobacco of  
402 the Department of Business and Professional Regulation on or  
403 before July 21, 2009, and shall include documentation  
404 accompanied by certified check, money order, or an electronic  
405 funds transfer for the amount of the additional surcharge due on  
406 the inventory. The manufacturer, distributor, or retailer may

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407 pay the surcharge in four equal installments of 25 percent of  
408 the total amount due. If the manufacturer, distributor, or  
409 retailer opts to pay in installments, it shall pay the first  
410 installment by July 21, 2009, along with the required  
411 documentation; the second installment by August 10, 2009; the  
412 third installment by August 30, 2009; and the fourth installment  
413 by September 9, 2009. Chapter 210, Florida Statutes, relating to  
414 penalties and interest for delinquent payments applies to this  
415 section. The proceeds of the additional surcharge on the  
416 existing inventory shall be deposited into the Health Care Trust  
417 Fund within the Agency for Health Care Administration.

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

420 210.05 Preparation and sale of stamps; discount.-

421 (5) Cigarettes sold to the Seminole Indian Tribe of Florida  
422 shall be administered as provided in s. 210.1801. ~~Agents or~~  
423 ~~wholesale dealers may sell stamped but untaxed cigarettes to the~~  
424 ~~Seminole Indian Tribe, or to members thereof, for retail sale.~~  
425 ~~Agents or wholesale dealers shall treat such cigarettes and the~~  
426 ~~sale thereof in the same manner, with respect to reporting and~~  
427 ~~stamping, as other sales under this part, but agents or~~  
428 ~~wholesale dealers shall not collect from the purchaser the tax~~  
429 ~~imposed by s. 210.02. The purchaser hereunder shall be~~  
430 ~~responsible to the agent or wholesale dealer for the services~~  
431 ~~and expenses incurred in affixing the stamps and accounting~~  
432 ~~therefor.~~

433 Section 10. Section 210.1801, Florida Statutes, is created  
434 to read:

435 210.1801 Administration of Indian-stamped cigarettes and

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436 other tobacco products; penalties for possession by nontribal  
437 members.—

438 (1) Agents or wholesale dealers may sell stamped but  
439 untaxed cigarettes to the Seminole Indian Tribe of Florida, or  
440 to members thereof, and to the Miccosukee Tribe of Florida  
441 Indians, or to members thereof, for retail sale to tribal  
442 members. Agents or wholesale dealers shall treat such cigarettes  
443 and the sale thereof in a fashion that distinguishes these  
444 cigarettes from those distributed or sold to nontribal members  
445 or entities by affixing a stamp that indicates the cigarettes as  
446 Indian cigarettes, and agents or wholesale dealers shall not  
447 collect from the purchaser the tax imposed by s. 210.02 or the  
448 surcharge impose by s. 210.011. The purchaser is responsible to  
449 the agent or wholesale dealer for the services and expenses  
450 incurred in affixing the stamps and accounting thereof.

451 (2) Agents or wholesale dealers may sell stamped but  
452 untaxed tobacco products as defined by s. 210.25(11) to the  
453 Seminole Indian Tribe of Florida, or to members thereof, and to  
454 the Miccosukee Tribe of Florida Indians, or to members thereof,  
455 for retail sale to tribal members. Agents or wholesale dealers  
456 shall treat such tobacco products and the sale thereof in a  
457 fashion that distinguishes these tobacco products from those  
458 distributed or sold to persons who are not tribal members or  
459 entities by affixing a stamp that indicates the cigarettes as  
460 Indian cigarettes and the tobacco products as Indian tobacco  
461 products, and agents or wholesale dealers shall not collect from  
462 the purchaser the tax imposed by s. 210.02 or s. 210.30, or the  
463 surcharge imposed by s. 210.011 or s. 210.211. Such stamps shall  
464 identify the tribe, or member thereof, to which the cigarettes



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465 are sold. The purchaser is responsible to the agent or wholesale  
466 dealer for the services and expenses incurred in affixing the  
467 stamps and accounting thereof.

468 (3) For purposes of this chapter, cigarettes stamped in a  
469 fashion that indicates them to be Indian cigarettes shall be  
470 known as "Indian cigarettes" and tobacco products that are  
471 stamped in a fashion that indicates the products to be Indian  
472 tobacco products shall be known as "Indian tobacco products."

473 (4) Excepting manufacturers or distributors licensed under  
474 the cigarette law and state-bonded warehouses, a nontribal  
475 member who possesses Indian cigarettes or Indian tobacco  
476 products commits a misdemeanor of the first degree, punishable  
477 as provided in s. 775.082 or s. 775.084 and is liable for a fine  
478 of \$1,000 or five times the retail value of the cigarettes  
479 involved, whichever is greater. The provisions of s.  
480 210.18(4)(b) do not apply to Indian cigarettes.

481 (5) The division shall conduct a public-awareness campaign  
482 regarding the penalties for possession of Indian cigarettes or  
483 Indian tobacco products by nontribal members. A notice must be  
484 conspicuously displayed in every location where cigarettes or  
485 other tobacco products are sold which contains the following  
486 provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW  
487 PHOHIBITS THE POSESSION OR SALE BY NONTRIBAL MEMBERS OF ANY  
488 CIGARRETES BEARING INDIAN STAMPS. FLORIDA LAW ALSO PROHIBITS THE  
489 POSSESSION OR SALE OF ANY TOBACCO PRODUCTS BEARING INDAIN STAMPS  
490 BY NONTRIBAL MEMBERS. VIOLATIONS OF THESE LAWS ARE A FIRST-  
491 DEGREE MISDEMEANOR AND MAY RESULT IN IMPRISONMENT AND FINES OF  
492 \$1,000 OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES OR  
493 TOBACCO PRODUCTS, WHICHEVER IS GREATER." This notice must be

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494 provided at the expense of the retail dealer.

495 (6) A sheriff, deputy sheriff, police officer, or state law  
496 enforcement officer, upon the seizure of any Indian cigarettes  
497 or Indian tobacco products in the possession of nontribal  
498 members under this section, shall promptly report the seizure to  
499 the division or its representative, together with a description  
500 of all such cigarettes and tobacco products seized, so that the  
501 state may be kept informed as to the size and magnitude of the  
502 illicit cigarette business. The division shall keep records  
503 showing the number of seizures and seized cigarettes reported  
504 to, or seized by, the division.

505 (7) Subsections (4) and (6) do not apply to cigarette and  
506 tobacco products sold to a tribe that has entered into an  
507 approved compact with the state which provides for revenue  
508 sharing between the tribe and the state relating to the  
509 imposition and collection of the taxes imposed by ss. 210.02 and  
510 210.30, and the surcharges imposed by ss. 210.011 and 210.211.  
511 Any compact must at a minimum provide for the state to receive  
512 as revenue sharing from the tribe the full amounts of the  
513 surcharges imposed by ss. 210.011 and 210.211. Upon the approval  
514 of a compact meeting the requirements of this subsection, the  
515 notice required in subsection (5) shall be modified to include:  
516 "IT IS NOT A VIOLATION FOR NONTRIBAL MEMBERS TO POSSESS  
517 CIGARETTES OR TOBACCO PRODUCTS BEARING THE STAMP OF (Insert name  
518 of tribe for which compact has been established)." Upon the  
519 approval of a compact meeting the conditions specified above  
520 with all Indian tribes, subsection (5) is no longer applicable.

521 Section 11. There is appropriated the sum of \$50,000 from  
522 the Alcoholic Beverage and Tobacco Trust Fund to the Division of

576-04580A-09

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523 Alcoholic Beverages and Tobacco of the Department of Business  
524 and Professional Regulation for the purposes of conducting the  
525 public awareness campaign required under s. 210.1801(5), Florida  
526 Statutes.

527 Section 12. This act shall take effect July 1, 2009.