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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 size 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; creating s. 210.095, F.S.; providing
19 definitions; providing that certain transactions
20 constitute a delivery sale of tobacco products;
21 requiring that a cigarette retailer obtain a license
22 before accepting an order for a delivery sale;
23 prohibiting the making of a delivery sale to a person
24 who is not an adult; requiring that a person accepting
25 an order for a delivery sale comply with certain
26 requirements; prohibiting the mailing, shipping, or
27 delivery of tobacco products in connection with an
28 order for delivery sale unless, before the first
29 delivery to a consumer, the person accepting such

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30 order takes certain actions; authorizing a person
31 accepting an order for delivery sale to request that a
32 consumer provide an e-mail address; requiring the
33 delivery of a notice to consumers making orders for
34 delivery sale; providing requirements for such notice;
35 requiring that each person who mails, ships, or
36 delivers tobacco products in connection with an order
37 for delivery sale fulfill specified requirements;
38 requiring that a person file a statement containing
39 certain information with the Department of Business
40 and Professional Regulation before selling or shipping
41 tobacco products; requiring that certain individuals
42 file certain information with the department at
43 specified intervals; providing that a person may
44 comply with certain provisions of state law by
45 complying with certain provisions of federal law;
46 providing for applicability of certain provisions of
47 state law; requiring the collection and remittance of
48 certain taxes; providing penalties for certain
49 violations of state law; classifying certain property
50 as contraband material; requiring the forfeiture of
51 tobacco products under certain circumstances;
52 authorizing the Attorney General, his or her designee,
53 a state attorney, or any person holding a specified
54 type of permit to bring certain actions in a court of
55 this state; amending s. 210.18, F.S.; providing
56 enhanced penalties for the sale or possession of any
57 quantity of counterfeit cigarettes; creating a reward
58 program for information concerning violations under

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59 part I of ch. 210, F.S.; amending s. 210.25, F.S.;
60 clarifying provisions with respect to definitions;
61 creating s. 210.211, F.S.; providing definitions;
62 levying a surcharge on tobacco products other than
63 cigarettes; providing for the surcharge to be
64 administered in the same manner as the tax imposed
65 under part II of ch. 210, F.S.; requiring that revenue
66 from the surcharge be deposited into the Health Care
67 Trust Fund within the Agency for Health Care
68 Administration; providing that the surcharge on
69 cigarettes and other tobacco products applies to
70 existing inventory on the effective date of the act;
71 requiring each manufacturer, distributor, wholesaler,
72 and vendor to take an inventory of the cigarettes and
73 other tobacco products in its possession on the
74 effective date of the act; requiring that the amount
75 of such inventory be certified to the Division of
76 Alcoholic Beverages and Tobacco of the Department of
77 Business and Professional Regulation by a specified
78 date; providing that the surcharge may be paid in four
79 equal installments; providing for penalties and
80 interest for delinquent payments; amending s. 210.05,
81 F.S.; conforming provisions to changes made by the
82 act; creating s. 210.1801, F.S.; providing that
83 certain members of an Indian tribe recognized in this
84 state are exempt from paying a cigarette tax under
85 certain conditions; providing that cigarettes sold on
86 an Indian reservation to a nontribal member are taxed;
87 providing that evidence of such tax is indicated by an

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88 affixed cigarette tax stamp; requiring the department
89 to provide Indian-tax-exemption coupons; requiring a
90 reservation cigarette seller to present these coupons
91 to a wholesale dealer in order to purchase tax-
92 exempted, stamped cigarettes; authorizing tribal
93 members to purchase tax-exempted, stamped cigarettes
94 from reservation cigarette sellers; authorizing the
95 governing bodies of Indian tribes to be provided with
96 Indian-tax-exemption coupons; authorizing Indian
97 tribes and reservation cigarette sellers to redeem
98 Indian-tax-exemption coupons; providing for the
99 calculation of the number of Indian-tax-exemption
100 coupons to be provided; requiring wholesale dealers to
101 keep records of transactions involving Indian-tax-
102 exemption coupons and to submit documentation to the
103 department; providing criteria for the documentation;
104 authorizing an Indian tribe, a tribal member, and a
105 reservation cigarette seller to purchase tax-exempted
106 cigarettes from a wholesale dealer under certain
107 conditions; prohibiting a wholesaler from collecting
108 the cigarette tax when given Indian-tax-exemption
109 coupons; authorizing a wholesale dealer to file a
110 claim for a refund with respect to a cigarette tax
111 previously paid; providing that an approved agreement
112 between an Indian tribe and the state takes precedence
113 over s. 210.1801, F.S.; requiring that the agreement
114 provide for revenue sharing between the tribe and the
115 state; providing an effective date.
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117 WHEREAS, the United States Surgeon General has found that
118 smoking causes lung cancer, heart disease, and emphysema, and

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

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

124 WHEREAS, the United States Surgeon General has found that
125 tobacco smoke increases the risk of lung cancer and heart
126 disease, even in nonsmokers, and

127 WHEREAS, the United States Surgeon General has found that
128 smokeless tobacco may cause gum disease, tooth loss, and mouth
129 cancer, and

130 WHEREAS, the United States Surgeon General has found that
131 secondhand smoke exposure causes respiratory symptoms in
132 children and slows their lung growth, and causes sudden infant
133 death syndrome (SIDS), acute respiratory infections, ear
134 problems, and more frequent and severe asthma attacks in
135 children, and

136 WHEREAS, health care costs attributable to smoking-related
137 illness in Florida have been estimated to exceed \$6 billion
138 annually, and

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

142 WHEREAS, the Legislature finds that the cost of tobacco
143 usage should be recouped from those persons who engage in the
144 use of tobacco products through a surcharge upon the retail
145 purchase of cigarettes and other tobacco products, and

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146 WHEREAS, the Legislature finds that the imposition of such
147 a surcharge will provide tax relief to Florida residents and
148 businesses that heretofore have been subject to exactions to pay
149 for the Medicaid costs attributable to the use of tobacco
150 products, NOW, THEREFORE,

151

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

153

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

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

158 210.01 Definitions.—When used in this part the following
159 words shall have the meaning herein indicated:

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

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

170 Section 3. Section 210.011, Florida Statutes, is created to
171 read:

172 210.011 Cigarette surcharge levied; collection.—

173 (1) A surcharge, in addition to all other taxes of every
174 kind levied by law, is levied upon the sale, receipt, purchase,

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175 possession, consumption, handling, distribution, and use of
176 cigarettes in this state, in the following amounts, except as
177 otherwise provided in subsections (2) and (3), for cigarettes of
178 standard dimensions:

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

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

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

187 (2) The descriptions of cigarettes contained in subsection
188 (1) are declared to be standard as to dimensions for the purpose
189 of levying a surcharge as provided in this section and if any
190 cigarette is received, purchased, possessed, sold, offered for
191 sale, given away, or used which is of a size other than those
192 standard dimensions, the cigarette is subject to a surcharge at
193 the rate of 4.2 cents on each such cigarette.

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

198 (a) Packages containing 10 cigarettes or fewer require a
199 surcharge of 50 cents.

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

202 (4) When cigarettes as described in paragraph (1) (b) are
203 packed in varying quantities of 20 cigarettes or fewer, except

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204 manufacturer's free samples authorized under s. 210.04(9), the
205 following rates shall govern:

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

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

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

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

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

218 (6) This surcharge shall be paid by the dealer to the
219 division for deposit and distribution as hereinafter provided
220 upon the first sale or transaction within the state, whether or
221 not such sale or transfer is to the ultimate purchaser or
222 consumer. The seller or dealer shall collect the surcharge from
223 the purchaser or consumer, and the purchaser or consumer shall
224 pay the surcharge to the seller. The seller or dealer is
225 responsible for the collection of the surcharge and payment of
226 the surcharge to the division. All surcharges are due not later
227 than the 10th day of the month following the calendar month in
228 which they were incurred, and thereafter shall bear interest at
229 the rate of 1 percent per month. If the amount of surcharge due
230 for a given period is assessed without allocating it to any
231 particular month, the interest begins accruing on the date of
232 the assessment. Whenever cigarettes are shipped from outside the

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233 state to anyone other than a distributing agent or wholesale
234 dealer, the person receiving the cigarettes is responsible for
235 the surcharge on the cigarettes and payment of the surcharge to
236 the division.

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

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

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

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

247 210.04 Construction; exemptions; collection.—

248 (9) Agents, located within or without the state, shall
249 purchase stamps and affix such stamps in the manner prescribed
250 to packages or containers of cigarettes to be sold, distributed,
251 or given away within the state, in which case any dealer
252 subsequently receiving such stamped packages of cigarettes will
253 not be required to purchase and affix stamps on such packages of
254 cigarettes. However, the division may, in its discretion,
255 authorize manufacturers to distribute in the state free sample
256 packages of cigarettes containing not less than 2 or more than
257 20 cigarettes without affixing any surcharge and tax stamps
258 provided copies of shipping invoices on such cigarettes are
259 furnished, and payment of all surcharges and taxes imposed on
260 such cigarettes by law is made, directly to the division not
261 later than the 10th day of each calendar month. The surcharge

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262 and tax on cigarettes in sample packages shall be based on a
263 unit in accordance with the surcharges levied under s.
264 210.011(1) and the taxing provisions of s. 210.02(1).

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

267 210.095 Mail order, Internet, and remote sales of tobacco
268 products; age verification.-

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

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

272 (b) "Consumer" means a person in this state who comes into
273 possession of any tobacco product subject to the tax imposed by
274 this chapter and who, at the time of possession, is not a
275 distributor intending to sell or distribute the tobacco product,
276 a retailer, or a wholesaler.

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

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

282 2. The tobacco products are delivered by use of mail or a
283 delivery service.

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

286 (e) "Legal minimum purchase age" means the minimum age at
287 which an individual may legally purchase tobacco products in
288 this state.

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

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291 (g) "Retailer" means any person who is not a licensed
292 distributor in possession of tobacco products subject to tax
293 under this chapter for the purposes of selling the tobacco
294 products to consumers.

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

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

301 (j) "Tobacco products" means all cigarettes, smoking
302 tobacco, snuff, fine-cut chewing tobacco, cut and granulated
303 tobacco, cavendish, plug or twist tobacco, and cigars.

304 (2) (a) A sale of tobacco products constituting a delivery
305 sale pursuant to paragraph (1) (c) is a delivery sale regardless
306 of whether the person accepting the order for the delivery sale
307 is located inside or outside this state.

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

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

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

315 1. The age verification requirements set forth in
316 subsection (3).

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

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

319 4. The registration and reporting requirements set forth in

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320 subsection (6).

321 5. The tax collection requirements set forth in subsection
322 (7).

323 6. The licensing and tax stamp requirements set forth in
324 this chapter that apply to sales of tobacco products occurring
325 entirely in this state.

326 7. All laws of this state generally applicable to sales of
327 tobacco products occurring entirely in this state which impose
328 excise taxes and assessments.

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

333 (a) Obtains from the individual submitting the order a
334 certification that includes:

335 1. Reliable confirmation that the individual is an adult;
336 and

337 2. A statement signed by the individual in writing and
338 under penalty of perjury that:

339 a. Certifies the address and date of birth of the
340 individual; and

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

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

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

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

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349 (b) Makes a good faith effort to verify the information
350 contained in the certification provided by the individual
351 pursuant to paragraph (a) against a commercially available
352 database that may be reasonably relied upon for accurate age
353 information or obtains a photocopy or other image of a valid
354 government-issued identification card stating the date of birth
355 or age of the individual.

356 (c) Provides to the individual, via electronic mail or
357 other means, a notice meeting the requirements of subsection
358 (4).

359 (d) If an order for tobacco products is made pursuant to an
360 advertisement on the Internet, receives payment for the delivery
361 sale from the consumer by a credit or debit card issued in the
362 name of the consumer, or by personal or company check of the
363 consumer.

364 (e) Imposes a two-carton minimum on each order of
365 cigarettes, and requires payment for the purchase of any tobacco
366 product to be made by personal check of the purchaser or the
367 purchaser's credit card. Payment by money order or cash may not
368 be received or permitted. The person accepting the order for
369 delivery sale shall submit to each credit card acquiring company
370 with which it has credit card sales identification information
371 in an appropriate form and format so that the words "tobacco
372 product" may be printed in the purchaser's credit card statement
373 when a purchase of a tobacco product is made by credit card
374 payment.

375 (f) Makes a telephone call after 5 p.m. to the purchaser
376 confirming the order before shipping the tobacco products. The
377 telephone call may be a person-to-person call or a recorded

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378 message. The person accepting the order for delivery sale is not
379 required to speak directly with a person and may leave a message
380 on an answering machine or by voice mail system.

381
382 In addition to the requirements of this subsection, a person
383 accepting an order for a delivery sale may request that a
384 consumer provide an electronic mail address.

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

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

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

391 (c) Taxable under this chapter.

392

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

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

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

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

404 1. The individual submitting the order for the delivery
405 sale or another adult who resides at the individual's address to
406 sign his or her name to accept delivery of the shipping

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407 container. Proof of the legal minimum purchase age of the
408 individual accepting delivery is required only if the individual
409 appears to be under 27 years of age.

410 2. Proof that the individual is either the addressee or the
411 adult designated by the addressee, in the form of a valid,
412 government-issued identification card bearing a photograph of
413 the individual who signs to accept delivery of the shipping
414 container.

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

417
418 If the person accepting a purchase order for a delivery sale
419 delivers the tobacco products without using a delivery service,
420 the person must comply with all of the requirements of this
421 section which apply to a delivery service ,and any failure to
422 comply with a requirement of this section constitutes a
423 violation thereof.

424 (6) (a) Before making sales or shipping tobacco products in
425 connection with sales, a person shall file with the department a
426 statement stating the person's name, trade name, and the address
427 of the person's principal place of business, as well as any
428 other place of business.

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

434 1. The name and address of the individual who submitted the
435 order for the sale.

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436 2. The name and address of the individual who accepted
437 delivery of the tobacco products.

438 3. The name and address of the person accepting the order
439 for the sale of tobacco products.

440 4. The name and address of the delivery service and the
441 name of the individual making the delivery.

442 5. The brand or brands of the tobacco products sold in the
443 sale.

444 6. The quantity of each brand of tobacco products sold in
445 the sale.

446 (c) A person may comply with the requirements of this
447 subsection by complying with the requirements of 15 U.S.C. 376.

448 (d) This section does not apply to sales of tobacco
449 products by a licensed distributor or to sales of tobacco
450 products by a retailer purchased from a licensed distributor.

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

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

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

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

469 (b) A person who is an adult and who knowingly submits a
470 false certification under subsection (3) commits a misdemeanor
471 of the first degree, punishable as provided in s. 775.082 or s.
472 775.083. For each offense, the person shall be fined \$10,000 or
473 five times the retail value of the tobacco products involved in
474 the violation, whichever is greater.

475 (c) A person who fails to pay any tax required in
476 connection with a delivery sale shall pay, in addition to any
477 other penalty, a penalty of five times the retail value of the
478 tobacco products involved.

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

482 (e) A person who, in connection with a delivery sale,
483 delivers tobacco products on behalf of a delivery service to an
484 individual who is not an adult commits a misdemeanor of the
485 third degree, punishable as provided in s. 775.082 or s.
486 775.083.

487 (f) Any fixture, equipment, or other material or personal
488 property on the premises of any person who, with the intent to
489 defraud this state, mails or ships tobacco products into this
490 state and fails to satisfy any of the requirements of this
491 section is a contraband article within the definition of s.
492 932.701(2)(a)3.

493 (g) An individual who is not an adult and who knowingly

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494 violates any provision of this section commits a misdemeanor of
495 the third degree, punishable as provided in s. 775.082 or s.
496 775.083.

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

502 Section 6. Subsections (6) and (9) of section 210.18,
503 Florida Statutes, are amended, and subsection (10) is added to
504 that section, to read:

505 210.18 Penalties for tax evasion; reports by sheriffs.—

506 ~~(6)(a) Every person, firm, or corporation, other than a~~
507 ~~licensee under the provisions of this part, who possesses,~~
508 ~~removes, deposits, or conceals, or aids in the possessing,~~
509 ~~removing, depositing, or concealing of, any unstamped cigarettes~~
510 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~
511 ~~second degree, punishable as provided in s. 775.082 or s.~~
512 ~~775.083. In lieu of the penalties provided in those sections,~~
513 ~~however, the person, firm, or corporation may pay the tax plus a~~
514 ~~penalty equal to the amount of the tax authorized under s.~~
515 ~~210.02 on the unstamped cigarettes.~~

516 (a) ~~(b)~~ Every person, firm, or corporation, other than a
517 licensee under the provisions of this part, who possesses,
518 removes, deposits, or conceals, or aids in the possessing,
519 removing, depositing, or concealing of, any unstamped cigarettes
520 ~~in excess of 50 cartons~~ is presumed to have knowledge that they
521 have not been taxed and commits ~~is guilty of~~ a felony of the
522 third degree, punishable as provided in s. 775.082, s. 775.083,

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523 or s. 775.084.

524 (b)~~(e)~~ This section does not apply to a person possessing
525 not in excess of three cartons of such cigarettes purchased by
526 such possessor outside the state in accordance with the laws of
527 the place where purchased and brought into this state by such
528 possessor. The burden of proof that such cigarettes were
529 purchased outside the state and in accordance with the laws of
530 the place where purchased shall in all cases be upon the
531 possessor of such cigarettes.

532 (9) Notwithstanding any other provision of law, the sale or
533 possession for sale of counterfeit cigarettes by any person or
534 by a manufacturer, importer, distributing agent, wholesale
535 dealer, or retail dealer shall result in the seizure of the
536 product and related machinery by the division or any law
537 enforcement agency, and shall be punishable as follows:-

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

543 2. A second or subsequent violation involving a total
544 quantity of fewer than two cartons of cigarettes or the
545 equivalent amount of other cigarettes is punishable by a fine
546 not to exceed \$5,000 or five times the retail value of the
547 cigarettes involved, whichever is greater, or imprisonment not
548 to exceed 5 years, or both, and shall also result in the
549 revocation by the division of the permit of the manufacturer,
550 importer, distributing agent, wholesale dealer, or retail
551 dealer.

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

557 2. A second or subsequent violation involving a quantity of
558 two or more cartons of cigarettes or the equivalent amount of
559 other cigarettes is punishable by a fine not to exceed \$50,000
560 or five times the retail value of the cigarettes involved,
561 whichever is greater, or imprisonment not to exceed 5 years, or
562 both, and shall result in the revocation by the division of the
563 permit of the manufacturer, importer, distributing agent,
564 wholesale dealer, or retail dealer.

565 (10) The division shall create a toll-free number for
566 reporting violations of this part. Upon a determination that a
567 violation has occurred, the division shall pay the informant a
568 reward of up to 50 percent of the fine levied and paid under
569 this section. A notice must be conspicuously displayed in every
570 location where cigarettes are sold which contains the following
571 provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW
572 PHOHIBITS THE POSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT
573 VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH
574 REWARD." This notice must be provided at the expense of the
575 retail dealer.

576 Section 7. Section 210.25, Florida Statutes, is amended to
577 read:

578 210.25 Definitions.—As used in this part unless otherwise
579 provided:

580 (1) "Business" means any trade, occupation, activity, or

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581 enterprise engaged in for the purpose of selling or distributing
582 tobacco products in this state.

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

586 (3) "Division" means the Division of Alcoholic Beverages
587 and Tobacco of the Department of Business and Professional
588 Regulation.

589 (4) "Distributor" means:

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

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

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

598 (5) "Manufacturer" means any person who manufactures and
599 sells tobacco products.

600 (6) "Place of business" means any place where tobacco
601 products are sold, manufactured, stored or kept for the purpose
602 of sale or consumption, including any vessel, vehicle, airplane,
603 train, or vending machine.

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

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

608 (9) "Sale" means any transfer, exchange, or barter for a
609 consideration. The term "sale" includes a gift by a person

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610 engaged in the business of selling tobacco products for
611 advertising or as a means of evading this part or for any other
612 purpose.

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

615 (11) "Tobacco products" means loose tobacco suitable for
616 smoking; snuff; snuff flour; cavendish; plug and twist tobacco;
617 fine cuts and other chewing tobaccos; shorts; refuse scraps;
618 clippings, cuttings, and sweepings of tobacco, and other kinds
619 and forms of tobacco prepared in such manner as to be suitable
620 for chewing; but "tobacco products" does not include cigarettes,
621 as defined by s. 210.01(1), or cigars.

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

624 (13) "Wholesale sales price" means the established price
625 for which a manufacturer sells a tobacco product to a
626 distributor, exclusive of any diminution by volume or other
627 discounts.

628 Section 8. Section 210.211, Florida Statutes, is created to
629 read:

630 210.211 Surcharge on tobacco products.-

631 (1) For the purposes of this section, the term "tobacco
632 products" means cigars, loose tobacco suitable for smoking;
633 snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts
634 and other chewing tobaccos; shorts; refuse scraps; clippings,
635 cuttings, and sweepings of tobacco, and other kinds and forms of
636 tobacco prepared in such manner as to be suitable for chewing;
637 but "tobacco products" does not include cigarettes, as defined
638 by s. 210.01(1).

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

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

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

651 (c) Ships or transports tobacco products to retailers in
652 this state, to be sold by those retailers. A surcharge may not
653 be levied on tobacco products shipped or transported outside
654 this state for sale or use outside this state.

655 (3) A surcharge is imposed upon the use or storage by
656 consumers of tobacco products in this state and upon such
657 consumers at the rate of \$1 for each ounce, with a proportionate
658 surcharge at the same rate on all fractions of an ounce thereof.
659 The surcharge imposed by this subsection does not apply if the
660 surcharge imposed by subsection (2) on such tobacco products has
661 been paid. This surcharge does not apply to the use or storage
662 of tobacco products in quantities of less than 1 pound in the
663 possession of any one consumer.

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

667 (5) No surcharge shall be imposed by this section upon

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668 tobacco products not within the taxing power of the state under
669 the Commerce Clause of the United States Constitution.

670 (6) The exemptions provided for cigarettes under s.
671 210.04(4) also apply to tobacco products subject to a surcharge
672 under this section.

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

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

679 Section 9. The additional surcharges imposed by ss. 210.011
680 and 210.211, Florida Statutes, apply to existing inventory as of
681 July 1, 2009. On July 1, 2009, each manufacturer, distributor,
682 wholesaler, and vendor in the state shall take an inventory of
683 the cigarettes and other tobacco products in its possession
684 before opening for business. The amount of inventory shall be
685 certified to the Division of Alcoholic Beverages and Tobacco of
686 the Department of Business and Professional Regulation on or
687 before July 21, 2009, and shall include documentation
688 accompanied by certified check, money order, or an electronic
689 funds transfer for the amount of the additional surcharge due on
690 the inventory. The manufacturer, distributor, or retailer may
691 pay the surcharge in four equal installments of 25 percent of
692 the total amount due. If the manufacturer, distributor, or
693 retailer opts to pay in installments, it shall pay the first
694 installment by July 21, 2009, along with the required
695 documentation; the second installment by August 10, 2009; the
696 third installment by August 30, 2009; and the fourth installment

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697 by September 9, 2009. Chapter 210, Florida Statutes, relating to
698 penalties and interest for delinquent payments applies to this
699 section. The proceeds of the additional surcharge on the
700 existing inventory shall be deposited into the Health Care Trust
701 Fund within the Agency for Health Care Administration.

702 Section 10. Subsection (5) of section 210.05, Florida
703 Statutes, is amended to read:

704 210.05 Preparation and sale of stamps; discount.-

705 (5) Cigarettes sold to the Seminole Indian Tribe of Florida
706 shall be administered as provided in s. 210.1801. Agents or
707 wholesale dealers may sell stamped but untaxed cigarettes to the
708 Seminole Indian Tribe, or to members thereof, for retail sale.
709 Agents or wholesale dealers shall treat such cigarettes and the
710 sale thereof in the same manner, with respect to reporting and
711 stamping, as other sales under this part, but agents or
712 wholesale dealers shall not collect from the purchaser the tax
713 imposed by s. 210.02. The purchaser hereunder shall be
714 responsible to the agent or wholesale dealer for the services
715 and expenses incurred in affixing the stamps and accounting
716 therefor.

717 Section 11. Section 210.1801, Florida Statutes, is created
718 to read:

719 210.1801 Exempt cigarettes for members of recognized Indian
720 tribes.-

721 (1) Notwithstanding any provision of this chapter to the
722 contrary, a member of an Indian tribe recognized in this state
723 who purchases cigarettes on an Indian reservation for his or her
724 own use or consumption is exempt from paying a cigarette tax.
725 However, such member purchasing cigarettes off an Indian

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726 reservation or a nontribal member purchasing cigarettes on an
727 Indian reservation is not exempt from paying the cigarette tax
728 when purchasing cigarettes within this state. Accordingly, all
729 cigarettes sold on an Indian reservation to a nontribal member
730 shall be taxed, and evidence of such tax shall be by means of an
731 affixed cigarette tax stamp.

732 (2) In order to ensure an adequate quantity of cigarettes
733 on Indian reservations which may be purchased by tribal members
734 who are exempt from the cigarette tax, the department shall
735 provide recognized Indian tribes within this state with Indian-
736 tax-exemption coupons as set forth in this section. A
737 reservation cigarette seller shall present such Indian-tax-
738 exemption coupons to a wholesale dealer licensed in this state
739 in order to purchase stamped cigarettes that are exempt from the
740 imposition of the cigarette tax. A tribal member may purchase
741 cigarettes that are exempt from the cigarette tax from a
742 reservation cigarette seller even though such cigarettes have an
743 affixed cigarette tax stamp.

744 (3) Indian-tax-exemption coupons shall be provided to the
745 recognized governing body of each Indian tribe to ensure that
746 each Indian tribe can obtain tax-exempted cigarettes that are
747 for the use or consumption by the tribe or its members. The
748 Indian-tax-exemption coupons shall be provided to the Indian
749 tribes on a quarterly basis. It is intended that each Indian
750 tribe will distribute the Indian-tax-exemption coupons to
751 reservation cigarette sellers on such tribe's reservation. Only
752 Indian tribes or reservation cigarette sellers on their
753 reservations may redeem such Indian-tax-exemption coupons
754 pursuant to this section.

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755 (a) The amount of Indian-tax-exemption coupons to be given
756 to the recognized governing body of each Indian tribe shall be
757 based upon the probable demand of the tribal members on the
758 tribe's reservation plus the amount needed for official tribal
759 use. The annual total amount of Indian-tax-exemption coupons to
760 be given to the recognized governing body of each Indian tribe
761 shall be calculated by multiplying the number of members of the
762 tribe times five packs of cigarettes times 365.

763 (b) Each wholesale dealer shall keep records of
764 transactions involving Indian-tax-exemption coupons and shall
765 submit appropriate documentation to the department when claiming
766 a refund as set forth in this section. Documentation shall
767 contain at least the following information:

768 1. The identity of the Indian tribe to which an Indian-tax-
769 exemption coupon is issued;

770 2. The identity and the quantity of the product for which
771 an Indian-tax-exemption coupon is issued;

772 3. The date of issuance and the date of expiration of the
773 an Indian-tax-exemption coupon; and

774 4. Any other information as the commissioner may deem
775 appropriate.

776 (4) (a) An Indian tribe may purchase cigarettes for its own
777 official use or consumption from a wholesale dealer without
778 payment of the cigarette tax to the extent that the Indian tribe
779 provides the wholesale dealer with Indian-tax-exemption coupons
780 entitling the Indian tribe to purchase such quantities of
781 cigarettes as allowed by each Indian-tax-exemption coupon
782 without paying the cigarette tax.

783 (b) A tribal member may purchase cigarettes for his or her

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784 own use or consumption without payment of the cigarette tax if
785 the tribal member makes such purchase on a qualified
786 reservation.

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

790 1. If the reservation cigarette seller brings the
791 cigarettes or causes them to be delivered onto a qualified
792 reservation for resale on the reservation;

793 2. To the extent that the reservation cigarette seller
794 provides the wholesale dealer with Indian-tax-exemption coupons
795 entitling the reservation cigarette seller to purchase such
796 quantities of cigarettes as allowed on each Indian-tax-exemption
797 coupon without paying the cigarette tax; and

798 3. If the cigarettes are affixed with a cigarette tax
799 stamp.

800 (d) A wholesale dealer shall not collect the cigarette tax
801 from any purchaser to the extent the purchaser gives the
802 wholesale dealer Indian-tax-exemption coupons that entitle the
803 purchaser to purchase such quantities of cigarettes as allowed
804 on each such Indian-tax-exemption coupon without paying the
805 cigarette tax.

806 (5) A wholesale dealer who has one or more Indian-tax-
807 exemption coupons may file a claim for a refund with respect to
808 any cigarette tax previously paid on cigarettes that the
809 wholesale dealer sold without collecting the tax because the
810 dealer accepted an Indian-tax-exemption coupon from its
811 purchaser pursuant to this section.

812 (6) If an Indian tribe enters into an agreement with the

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813 state and the Legislature approves such agreement regarding the
814 sale and distribution of cigarettes on the tribe's reservation,
815 the terms of such agreement shall take precedence over the
816 provisions of this section and exempt such tribe from taxes to
817 the extent that the taxes are specifically referred to in the
818 agreement. The sale or distribution, including transportation,
819 of any cigarettes to the tribe's reservation shall be in
820 accordance with the provisions of such agreement. This agreement
821 must provide for revenue sharing between the tribe and the state
822 relating to the imposition and collection of the taxes imposed
823 by ss. 210.02 and 210.30 and the surcharges imposed by ss.
824 210.011 and 210.211 and must at a minimum provide for the state
825 to receive as revenue sharing from the tribe the full amounts of
826 the surcharges imposed by ss. 210.011 and 210.211.

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