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

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30 actions; authorizing a person accepting an order for
31 delivery sale to request that a consumer provide an e-
32 mail address; requiring the delivery of a notice to
33 consumers making orders for delivery sale; providing
34 requirements for such notice; requiring that each
35 person who mails, ships, or delivers tobacco products
36 in connection with an order for delivery sale fulfill
37 specified requirements; requiring that a person file a
38 statement containing certain information with the
39 Department of Business and Professional Regulation
40 before selling or shipping tobacco products; requiring
41 that certain individuals file certain information with
42 the Division of Alcoholic Beverages and Tobacco of the
43 Department of Business and Professional Regulation at
44 specified intervals; providing that a person may
45 comply with certain provisions of state law by
46 complying with specified provisions of federal law;
47 providing for applicability of certain provisions of
48 state law; requiring the collection and remittance of
49 certain taxes; providing penalties for certain
50 violations of state law; classifying certain property
51 as contraband material; requiring the forfeiture of
52 tobacco products under certain circumstances;
53 authorizing the Attorney General, his or her designee,
54 a state attorney, or any person holding a specified
55 type of permit to bring certain actions in a court of
56 this state; amending s. 210.18, F.S.; creating a
57 reward program for information concerning violations
58 under part I of ch. 210, F.S.; creating s. 210.276,

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59 F.S.; levying a surcharge on tobacco products other
60 than cigarettes; providing for the surcharge to be
61 administered in the same manner as the tax imposed
62 under part II of ch. 210, F.S.; requiring that revenue
63 from the surcharge be deposited into the Health Care
64 Trust Fund within the Agency for Health Care
65 Administration; providing for the surcharges on
66 cigarettes and other tobacco products to be levied
67 upon existing inventory on the effective date of the
68 act; requiring each manufacturer, distributing agent,
69 wholesale dealer, retail dealer, distributor, and
70 retailer to take an inventory of the cigarettes and
71 other tobacco products in its possession on the
72 effective date of the act; requiring that the amount
73 of inventory be certified to the Division of Alcoholic
74 Beverages and Tobacco of the Department of Business
75 and Professional Regulation by a specified date;
76 specifying criteria that a retailer must use to
77 calculate the tax on inventory of certain tobacco
78 products; authorizing the surcharge to be paid in four
79 equal installments; providing for penalties and
80 interest for delinquent payments; authorizing a
81 collection allowance for conducting the inventory and
82 remitting the tax on inventory of certain tobacco
83 products; amending s. 210.05, F.S.; conforming
84 provisions to changes made by the act; creating s.
85 210.1801, F.S.; providing that certain members of an
86 Indian tribe recognized in this state are exempt from
87 paying a cigarette tax and surcharge under certain

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88 conditions; providing that cigarettes sold on an
89 Indian reservation to a nontribal member are subject
90 to the tax and surcharge; providing that evidence of
91 such tax and surcharge is indicated by an affixed
92 cigarette tax and surcharge stamp; requiring the
93 Division of Alcoholic Beverages and Tobacco of the
94 Department of Business and Professional Regulation to
95 provide Indian-tax-and-surcharge-exemption coupons;
96 requiring a reservation cigarette seller to present
97 these coupons to a wholesale dealer in order to
98 purchase stamped cigarettes that are exempt from the
99 tax and surcharge; authorizing tribal members to
100 purchase stamped cigarettes that are exempt from the
101 tax and surcharge from reservation cigarette sellers;
102 authorizing the governing bodies of Indian tribes to
103 be provided with Indian-tax-and-surcharge-exemption
104 coupons; authorizing Indian tribes and reservation
105 cigarette sellers to redeem Indian-tax-and-surcharge-
106 exemption coupons; providing for the calculation of
107 the number of Indian-tax-and-surcharge-exemption
108 coupons to be provided; requiring wholesale dealers to
109 keep records of transactions involving Indian-tax-and-
110 surcharge-exemption coupons and to submit
111 documentation to the Division of Alcoholic Beverages
112 and Tobacco of the Department of Business and
113 Professional Regulation; providing criteria for the
114 documentation; authorizing an Indian tribe, a tribal
115 member, and a reservation cigarette seller to purchase
116 cigarettes that are exempt from the tax and surcharge

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117 from a wholesale dealer under certain conditions;
118 prohibiting a wholesaler from collecting the cigarette
119 tax when given Indian-tax-and-surcharge-exemption
120 coupons; authorizing a wholesale dealer to file a
121 claim for a refund with respect to a cigarette tax and
122 surcharge previously paid; providing that an approved
123 agreement between an Indian tribe and the state takes
124 precedence over s. 210.1801, F.S.; requiring that the
125 agreement provide for revenue sharing between the
126 tribe and the state; providing an effective date.
127

128 WHEREAS, the United States Surgeon General has found that
129 smoking causes lung cancer, heart disease, and emphysema, and

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

133 WHEREAS, the United States Surgeon General has found that
134 tobacco smoke increases the risk of lung cancer and heart
135 disease, even in nonsmokers, and

136 WHEREAS, the United States Surgeon General has found that
137 smokeless tobacco may cause gum disease, tooth loss, and mouth
138 cancer, and

139 WHEREAS, the United States Surgeon General has found that
140 exposure to secondhand smoke causes respiratory symptoms in
141 children and slows their lung growth, and causes sudden infant
142 death syndrome (SIDS), acute respiratory infections, ear
143 problems, and more frequent and severe asthma attacks in
144 children, and

145 WHEREAS, health care costs attributable to smoking-related

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146 illness in Florida have been estimated to exceed \$6 billion
147 annually, and

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

151 WHEREAS, the Legislature finds that the cost of tobacco
152 usage should be recouped from those persons who engage in the
153 use of tobacco products through a surcharge upon the retail
154 purchase of cigarettes and other tobacco products, and

155 WHEREAS, the Legislature finds that the imposition of such
156 a surcharge will provide tax relief to Florida residents and
157 businesses that heretofore have been subject to exactions to pay
158 for the Medicaid costs attributable to the use of tobacco
159 products, NOW, THEREFORE,

160

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

162

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

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

167 210.01 Definitions.—When used in this part the following
168 words shall have the meaning herein indicated:

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

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

179 Section 3. Section 210.011, Florida Statutes, is created to
180 read:

181 210.011 Cigarette surcharge levied; collection.-

182 (1) A surcharge, in addition to all other taxes of every
183 kind levied by law, is levied upon the sale, receipt, purchase,
184 possession, consumption, handling, distribution, and use of
185 cigarettes in this state, in the following amounts, except as
186 otherwise provided in subsections (2)-(5), for cigarettes of
187 standard dimensions:

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

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

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

196 (2) The descriptions of cigarettes contained in subsection
197 (1) are declared to be standard as to dimensions for the purpose
198 of levying a surcharge as provided in this section. If any
199 cigarette is received, purchased, possessed, sold, offered for
200 sale, given away, or used which is of a size other than those
201 standard dimensions, the cigarette is subject to a surcharge at
202 the rate of 4.2 cents on each cigarette.

203 (3) When cigarettes as described in paragraph (1)(a) are

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204 packed in varying quantities of 20 cigarettes or fewer, except
205 the manufacturer's free samples authorized under s. 210.04(9),
206 the following rates shall govern:

207 (a) Packages containing 10 cigarettes or fewer require a
208 surcharge of 50 cents.

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

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

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

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

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

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

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

227 (6) This surcharge shall be paid by the dealer to the
228 division for deposit and distribution as hereinafter provided
229 upon the first sale or transaction within the state, whether
230 such sale or transfer is to the ultimate purchaser or consumer.
231 The seller or dealer shall collect the surcharge from the
232 purchaser or consumer, and the purchaser or consumer shall pay

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233 the surcharge to the seller. The seller or dealer is responsible
234 for the collection of the surcharge and payment of the surcharge
235 to the division. All surcharges are due not later than the 10th
236 day of the month following the calendar month in which they were
237 incurred, and thereafter shall bear interest at the rate of 1
238 percent per month. If the amount of surcharge due for a given
239 period is assessed without allocating it to any particular
240 month, the interest begins accruing on the date of the
241 assessment. Whenever cigarettes are shipped from outside the
242 state to anyone other than a distributing agent or wholesale
243 dealer, the person receiving the cigarettes is responsible for
244 the surcharge on the cigarettes and payment of the surcharge to
245 the division.

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

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

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

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

256 210.04 Construction; exemptions; collection.—

257 (9) Agents, located within or without the state, shall
258 purchase stamps and affix such stamps in the manner prescribed
259 to packages or containers of cigarettes to be sold, distributed,
260 or given away within the state, in which case any dealer
261 subsequently receiving such stamped packages of cigarettes will

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262 not be required to purchase and affix stamps on such packages of
263 cigarettes. However, the division may, in its discretion,
264 authorize manufacturers to distribute in the state free sample
265 packages of cigarettes containing not less than 2 or more than
266 20 cigarettes without affixing any surcharge and tax stamps
267 provided copies of shipping invoices on such cigarettes are
268 furnished, and payment of all surcharges and taxes imposed on
269 such cigarettes by law is made, directly to the division not
270 later than the 10th day of each calendar month. The surcharge
271 and tax on cigarettes in sample packages shall be based on a
272 unit in accordance with the surcharges levied under s.
273 210.011(1) and the taxing provisions of s. 210.02(1).

274 Section 5. Section 210.095, Florida Statutes, is created to
275 read:

276 210.095 Mail order, Internet, and remote sales of tobacco
277 products; age verification.-

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

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

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

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

288 1. The consumer submits the order for the sale by
289 telephonic or other voice transmission, mail, delivery service,
290 or the Internet or other online service; or

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291 2. The tobacco products are delivered by use of mail or a
292 delivery service.

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

295 (e) "Legal minimum purchase age" means the minimum age at
296 which an individual may legally purchase tobacco products in
297 this state.

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

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

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

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

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

313 (2) (a) A sale of tobacco products constituting a delivery
314 sale pursuant to paragraph (1) (c) is a delivery sale regardless
315 of whether the person accepting the order for the delivery sale
316 is located inside or outside this state.

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

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

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

324 1. The age-verification requirements set forth in
325 subsection (3).

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

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

328 4. The registration and reporting requirements set forth in
329 subsection (6).

330 5. The tax collection requirements set forth in subsection
331 (7).

332 6. The licensing and tax stamp requirements set forth in
333 this chapter which apply to sales of tobacco products occurring
334 entirely in this state.

335 7. All laws of this state generally applicable to sales of
336 tobacco products occurring entirely in this state which impose
337 excise taxes and assessments.

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

342 (a) Obtains from the individual submitting the order a
343 certification that includes:

344 1. Reliable confirmation that the individual is an adult;
345 and

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

348 a. Certifies the address and date of birth of the

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349 individual; and

350 b. Confirms that the individual wants to receive delivery

351 sales from a tobacco company and understands that, under the

352 laws of this state, the following actions are illegal:

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

354 (II) Selling tobacco products to individuals under the

355 legal minimum purchase age; and

356 (III) Purchasing tobacco products, if the person making the

357 purchase is under the legal minimum purchase age.

358 (b) Makes a good faith effort to verify the information

359 contained in the certification provided by the individual

360 pursuant to paragraph (a) against a commercially available

361 database that may be reasonably relied upon for accurate age

362 information or obtains a photocopy or other image of a valid

363 government-issued identification card stating the date of birth

364 or age of the individual.

365 (c) Provides to the individual, via electronic mail or

366 other means, a notice meeting the requirements of subsection

367 (4).

368 (d) If an order for tobacco products is made pursuant to an

369 advertisement on the Internet, receives payment for the delivery

370 sale from the consumer by a credit or debit card issued in the

371 name of the consumer, or by personal or company check of the

372 consumer.

373 (e) Imposes a two-carton minimum on each order of

374 cigarettes, and requires payment for the purchase of any tobacco

375 product to be made by personal or company check of the purchaser

376 or the purchaser's credit card or debit card. Payment by money

377 order or cash may not be received or permitted. The person

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378 accepting the order for delivery sale shall submit, to each
379 credit-card acquiring company with which the person has credit-
380 card sales, identification information in an appropriate form
381 and format so that the words "tobacco product" may be printed in
382 the purchaser's credit card statement when a purchase of a
383 tobacco product is made by credit card payment.

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

390
391 In addition to the requirements of this subsection, a person
392 accepting an order for a delivery sale may request that a
393 consumer provide an electronic mail address.

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

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

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

400 (c) Taxable under this chapter.

401
402 The notice must include an explanation of how each tax has been,
403 or is to be, paid with respect to the delivery sale.

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

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

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

413 1. The individual submitting the order for the delivery
414 sale or another adult who resides at the individual's address to
415 sign his or her name to accept delivery of the shipping
416 container. Proof of the legal minimum purchase age of the
417 individual accepting delivery is required only if the individual
418 appears to be under 27 years of age.

419 2. Proof that the individual is either the addressee or the
420 adult designated by the addressee, in the form of a valid,
421 government-issued identification card bearing a photograph of
422 the individual who signs to accept delivery of the shipping
423 container.

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

426
427 If the person accepting a purchase order for a delivery sale
428 delivers the tobacco products without using a delivery service,
429 the person must comply with all of the requirements of this
430 section which apply to a delivery service. Any failure to comply
431 with a requirement of this section constitutes a violation
432 thereof.

433 (6) (a) Before making sales or shipping tobacco products in
434 connection with sales, a person shall file with the division a
435 statement providing the person's name, trade name, and the

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436 address of the person's principal place of business, as well as
437 any other place of business.

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

443 1. The name and address of the individual who submitted the
444 order for the sale.

445 2. The name and address of the individual who accepted
446 delivery of the tobacco products.

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

449 4. The name and address of the delivery service and the
450 name of the individual making the delivery.

451 5. The brand or brands of the tobacco products sold in the
452 sale.

453 6. The quantity of each brand of tobacco products sold in
454 the sale.

455 (c) A person may comply with the requirements of this
456 subsection by complying with the requirements of 15 U.S.C. s.
457 376.

458 (d) This section does not apply to sales of tobacco
459 products by a licensed distributor or to sales of tobacco
460 products by a retailer purchased from a licensed distributor.

461 (7) Each person accepting a purchase order for a delivery
462 sale shall collect and remit to the division all taxes imposed
463 on tobacco products by this state with respect to the delivery
464 sale. With respect to cigarettes, the collection and remission

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465 are not required if the person has obtained proof in the form of
466 the presence of applicable tax stamps or tax-exempt stamps, or
467 other proof that the taxes have already been paid to this state.

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

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

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

479 (b) A person who is an adult and knowingly submits a false
480 certification under subsection (3) commits a misdemeanor of the
481 first degree, punishable as provided in s. 775.082 or s.
482 775.083. For each offense, the person shall be fined \$10,000 or
483 five times the retail value of the tobacco products involved in
484 the violation, whichever is greater.

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

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

492 (e) A person who, in connection with a delivery sale,
493 delivers tobacco products on behalf of a delivery service to an

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494 individual who is not an adult commits a misdemeanor of the
495 third degree, punishable as provided in s. 775.082 or s.
496 775.083.

497 (f) Any fixture, equipment, or other material or personal
498 property on the premises of any person who, with the intent to
499 defraud this state, mails or ships tobacco products into this
500 state and fails to satisfy any of the requirements of this
501 section is a contraband article within the definition of s.
502 932.701(2)(a)3.

503 (g) An individual who is not an adult and who knowingly
504 violates any provision of this section commits a misdemeanor of
505 the third degree, punishable as provided in s. 775.082 or s.
506 775.083.

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

512 Section 6. Subsection (6) of section 210.18, Florida
513 Statutes, is amended, and subsection (11) is added to that
514 section, to read:

515 210.18 Penalties for tax evasion; reports by sheriffs.—

516 ~~(6) (a) 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 ~~not in excess of 50 cartons is guilty of a misdemeanor of the~~
521 ~~second degree, punishable as provided in s. 775.082 or s.~~
522 ~~775.083. In lieu of the penalties provided in those sections,~~

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523 ~~however, the person, firm, or corporation may pay the tax plus a~~
524 ~~penalty equal to the amount of the tax authorized under s.~~
525 ~~210.02 on the unstamped cigarettes.~~

526 ~~(a)~~ (b) Every person, firm, or corporation, other than a
527 licensee under the provisions of this part, who possesses,
528 removes, deposits, or conceals, or aids in the possessing,
529 removing, depositing, or concealing of, any unstamped cigarettes
530 ~~in excess of 50 cartons~~ is presumed to have knowledge that they
531 have not been taxed and commits ~~is guilty of~~ a felony of the
532 third degree, punishable as provided in s. 775.082, s. 775.083,
533 or s. 775.084.

534 ~~(b)~~ (e) This section does not apply to a person possessing
535 not in excess of three cartons of such cigarettes purchased by
536 such possessor outside the state in accordance with the laws of
537 the place where purchased and brought into this state by such
538 possessor. The burden of proof that such cigarettes were
539 purchased outside the state and in accordance with the laws of
540 the place where purchased shall in all cases be upon the
541 possessor of such cigarettes.

542 (11) The division shall create a toll-free number for
543 reporting violations of this part. Upon a determination that a
544 violation has occurred, the informant who provided the
545 information that led to the determination shall be paid a reward
546 of up to 50 percent of the fine levied and paid under this
547 section. A notice must be conspicuously displayed in every
548 location where cigarettes are sold which contains the following
549 provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW
550 PROHIBITS THE POSSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT
551 VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH

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552 REWARD." This notice must be provided at the expense of the
553 retail dealer.

554 Section 7. Section 210.276, Florida Statutes, is created to
555 read:

556 210.276 Surcharge on tobacco products.-

557 (1) A surcharge is levied upon all tobacco products in this
558 state and upon any person engaged in business as a distributor
559 of tobacco products at the rate of 60 percent of the wholesale
560 sales price. The surcharge shall be levied at the time the
561 distributor:

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

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

566 (c) Ships or transports tobacco products to retailers in
567 this state, to be sold by those retailers. A surcharge may not
568 be levied on tobacco products shipped or transported outside
569 this state for sale or use outside this state.

570 (2) A surcharge is imposed upon the use or storage by
571 consumers of tobacco products in this state and upon such
572 consumers at the rate of 60 percent of the wholesale sales
573 price. The surcharge imposed by this subsection does not apply
574 if the surcharge imposed by subsection (1) on such tobacco
575 products has been paid. This surcharge does not apply to the use
576 or storage of tobacco products in quantities of less than 1
577 pound in the possession of any one consumer.

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

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

584 (5) The exemptions provided for cigarettes under s.
585 210.04(4) also apply to tobacco products subject to a surcharge
586 under this section.

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

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

593 Section 8. (1) The additional surcharges imposed by ss.
594 210.011 and 210.276, Florida Statutes, are levied upon existing
595 inventory on July 1, 2009. On July 1, 2009, each manufacturer,
596 distributing agent, wholesale dealer, retail dealer, as defined
597 in s. 210.01, Florida Statutes, and manufacturer, distributor,
598 and retailer, as defined in s. 210.25, Florida Statutes, in the
599 state shall take an inventory of the cigarettes and other
600 tobacco products in its possession before opening for business.
601 The amount of inventory shall be certified to the Division of
602 Alcoholic Beverages and Tobacco of the Department of Business
603 and Professional Regulation on or before July 21, 2009, and
604 shall include documentation accompanied by certified check,
605 money order, or an electronic funds transfer for the amount of
606 the additional surcharge due on the inventory. For the purpose
607 of calculating the tax due by a retailer on the inventory of
608 tobacco products other than cigarettes under s. 210.276, Florida
609 Statutes, the wholesale sales price shall equal 75 percent of

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610 the price paid by the retailer to a distributor or manufacturer.
611 The manufacturer, distributing agent, wholesale dealer, retail
612 dealer, distributor, or retailer may pay the surcharge in four
613 equal installments of 25 percent of the total amount due. If the
614 manufacturer, distributing agent, wholesale dealer, retail
615 dealer, distributor, or retailer chooses to pay in installments,
616 it must pay the first installment by July 21, 2009, along with
617 the required documentation; the second installment by August 10,
618 2009; the third installment by August 30, 2009; and the fourth
619 installment by September 9, 2009. Chapter 210, Florida Statutes,
620 relating to penalties and interest for delinquent payments,
621 applies to this section. The proceeds of the additional
622 surcharge on the existing inventory shall be deposited into the
623 Health Care Trust Fund within the Agency for Health Care
624 Administration.

625 (2) For the purpose of compensating each manufacturer,
626 distributing agent, wholesale dealer, retail dealer,
627 distributor, and retailer for taking an inventory of the
628 cigarettes and other tobacco products in its possession and
629 remitting the surcharge levied on these products, each
630 manufacturer, distributing agent, wholesale dealer, retail
631 dealer, distributor, and retailer may deduct 5 percent of the
632 amount of the surcharge due and certified and remitted to the
633 Division of Alcoholic Beverages and Tobacco of the Department of
634 Business and Professional Regulation as a collection allowance.

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

638 (b) The Division of Alcoholic Beverages and Tobacco of the

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639 Department of Business and Professional Regulation may deny the
640 collection allowance if a manufacturer, distributing agent,
641 wholesale dealer, retail dealer, distributor, or retailer of
642 products files incomplete documentation. For the purposes of the
643 surcharge on inventory, a return is incomplete if it is lacking
644 the information necessary to ascertain the surcharge due.

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

647 210.05 Preparation and sale of stamps; discount.-

648 (5) Cigarettes sold to the Seminole Indian Tribe of Florida
649 shall be administered as provided in s. 210.1801. ~~Agents or~~
650 ~~wholesale dealers may sell stamped but untaxed cigarettes to the~~
651 ~~Seminole Indian Tribe, or to members thereof, for retail sale.~~
652 ~~Agents or wholesale dealers shall treat such cigarettes and the~~
653 ~~sale thereof in the same manner, with respect to reporting and~~
654 ~~stamping, as other sales under this part, but agents or~~
655 ~~wholesale dealers shall not collect from the purchaser the tax~~
656 ~~imposed by s. 210.02. The purchaser hereunder shall be~~
657 ~~responsible to the agent or wholesale dealer for the services~~
658 ~~and expenses incurred in affixing the stamps and accounting~~
659 ~~therefor.~~

660 Section 10. Section 210.1801, Florida Statutes, is created
661 to read:

662 210.1801 Exempt cigarettes for members of recognized Indian
663 tribes.-

664 (1) Notwithstanding any provision of this chapter to the
665 contrary, a member of an Indian tribe recognized in this state
666 who purchases cigarettes on an Indian reservation for his or her
667 own use is exempt from paying a cigarette tax and surcharge.

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668 However, such member purchasing cigarettes outside of Indian
669 reservation or a nontribal member purchasing cigarettes on an
670 Indian reservation is not exempt from paying the cigarette tax
671 or surcharge when purchasing cigarettes within this state.
672 Accordingly, the tax and surcharge shall apply to all cigarettes
673 sold on an Indian reservation to a nontribal member, and
674 evidence of such tax or surcharge shall be by means of an
675 affixed cigarette tax and surcharge stamp.

676 (2) In order to ensure an adequate quantity of cigarettes
677 on Indian reservations which may be purchased by tribal members
678 who are exempt from the cigarette tax and surcharge, the
679 division shall provide recognized Indian tribes within this
680 state with Indian-tax-and-surcharge-exemption coupons as set
681 forth in this section. A reservation cigarette seller shall
682 present such Indian-tax-and-surcharge-exemption coupons to a
683 wholesale dealer licensed in this state in order to purchase
684 stamped cigarettes that are exempt from the imposition of the
685 cigarette tax and surcharge. A tribal member may purchase
686 cigarettes that are exempt from the cigarette tax and surcharge
687 from a reservation cigarette seller even though such cigarettes
688 have an affixed cigarette tax-and-surcharge stamp.

689 (3) Indian-tax-and-surcharge-exemption coupons shall be
690 provided to the recognized governing body of each Indian tribe
691 to ensure that each Indian tribe can obtain cigarettes that are
692 exempt from the tax and surcharge which are for the use of the
693 tribe or its members. The Indian-tax-and-surcharge-exemption
694 coupons shall be provided to the Indian tribes quarterly. It is
695 intended that each Indian tribe will distribute the Indian-tax-
696 and-surcharge-exemption coupons to reservation cigarette sellers

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697 on such tribe's reservation. Only Indian tribes or reservation
698 cigarette sellers on their reservations may redeem such Indian-
699 tax-and-surcharge-exemption coupons pursuant to this section.

700 (a) The number of Indian-tax-and-surcharge-exemption
701 coupons to be given to the recognized governing body of each
702 Indian tribe shall be based upon the probable demand of the
703 tribal members on the tribe's reservation plus the number needed
704 for official tribal use. The annual total number of Indian-tax-
705 and-surcharge-exemption coupons to be given to the recognized
706 governing body of each Indian tribe shall be calculated by
707 multiplying the number of members of the tribe times five packs
708 of cigarettes times 365.

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

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

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

718 3. The date of issuance and the date of expiration of the
719 Indian-tax-and-surcharge-exemption coupon; and

720 4. Any other information as the division may deem
721 appropriate.

722 (4) (a) An Indian tribe may purchase cigarettes for its own
723 official use from a wholesale dealer without payment of the
724 cigarette tax and surcharge to the extent that the Indian tribe
725 provides the wholesale dealer with Indian-tax-and-surcharge-

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726 exemption coupons entitling the Indian tribe to purchase such
727 quantities of cigarettes as allowed by each Indian-tax-and-
728 surcharge-exemption coupon without paying the cigarette tax and
729 surcharge.

730 (b) A tribal member may purchase cigarettes for his or her
731 own use without payment of the cigarette tax and surcharge if
732 the tribal member makes such purchase on a qualified
733 reservation.

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

737 1. If the reservation cigarette seller brings the
738 cigarettes or causes them to be delivered onto a qualified
739 reservation for resale on the reservation;

740 2. To the extent that the reservation cigarette seller
741 provides the wholesale dealer with Indian-tax-and-surcharge-
742 exemption coupons entitling the reservation cigarette seller to
743 purchase such quantities of cigarettes as allowed on each
744 Indian-tax-and-surcharge-exemption coupon without paying the
745 cigarette tax and surcharge; and

746 3. If the cigarettes are affixed with a cigarette tax and
747 surcharge stamp.

748 (d) A wholesale dealer may not collect the cigarette tax
749 and surcharge from any purchaser if the purchaser gives the
750 dealer Indian-tax-and-surcharge-exemption coupons that entitle
751 the purchaser to purchase such quantities of cigarettes as
752 allowed on each such Indian-tax-and-surcharge-exemption coupon
753 without paying the cigarette tax and surcharge.

754 (5) A wholesale dealer who has one or more Indian-tax-and-

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755 surcharge-exemption coupons may file a claim for a refund with
756 respect to any cigarette tax previously paid on cigarettes that
757 the wholesale dealer sold without collecting the tax because the
758 dealer accepted an Indian-tax-and-surcharge-exemption coupon
759 from a purchaser pursuant to this section.

760 (6) If an Indian tribe enters into an agreement with the
761 state and the Legislature approves such agreement regarding the
762 sale and distribution of cigarettes on the tribe's reservation,
763 the terms of the agreement take precedence over the provisions
764 of this section and exempt the tribe from the tax and surcharge
765 if the tax and surcharge are specifically addressed in the
766 agreement. The sale or distribution, including transportation,
767 of any cigarettes to the tribe's reservation shall be in
768 accordance with the provisions of the agreement. The agreement
769 must provide for revenue sharing between the tribe and the state
770 relating to the imposition and collection of the taxes imposed
771 by ss. 210.02 and 210.30 and the surcharges imposed by ss.
772 210.011 and 210.276 and must, at a minimum, provide for the
773 state to receive as revenue sharing from the tribe the full
774 amounts of the surcharges imposed by ss. 210.011 and 210.276.

775 Section 11. This act shall take effect July 1, 2009.