

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 615 Sale of Tobacco Products
SPONSOR(S): Business & Consumer Affairs Subcommittee and Horner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Livingston	Creamer
2) Finance & Tax Committee	24 Y, 0 N, As CS	Wilson	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) maintains a delinquent payment list relating to the alcoholic beverage industry for retailers who do not pay distributors within the statutorily allotted timeframe when buying alcoholic beverages on credit. There are no corresponding statutes requiring this type of delinquent payment mechanism for cigarette and other tobacco product retailers and tobacco distributors nor does the division maintain such a list.

Currently, the term (cigarette) manufacturer means a domestic person or entity that possesses a valid federal permit and that manufactures, fabricates, assembles, processes, or labels a finished cigarette.

The bill modifies the definition of manufacturer, to include a person or entity that provides for the use of a machine located at a retail establishment that enables a person to fabricate, assemble, or process tobacco products into a roll or tube for smoking. This provision will become effective July 1, 2014.

The bill also addresses the extension of credit to retail dealers for the purchase of tobacco products. The bill authorizes credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer.

The bill further provides that when the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer the wholesaler may petition the division to suspend or to deny renewal of the tobacco retailer's tobacco permit for reasons of nonpayment of debt. The tobacco retailer will be unable to renew the tobacco permit until the retail dealer submits proof to the division that arrangements for payment have been agreed to between the parties or that the civil judgment against the retail dealer has been satisfied in full.

The Revenue Estimating Conference has not reviewed this bill. Staff estimates the provisions in this bill will have an indeterminate positive state revenue impact as a result of additional taxes and license fees collected by the division from manufacturers.

The bill has an effective date of July 1, 2012, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

Tobacco overview and definitions

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of tobacco products and alcoholic beverages.¹

Chapters 210, 386, and 569, F.S., provide the regulatory and tax structure for tobacco sales. Part I of chapter 210, F.S., provides for the taxation of cigarettes. Part II provides for the taxation of other tobacco products. Cigarettes are taxed in a different manner than other tobacco products and cigars are not subject to an excise tax. Tobacco products, cigars, and cigarettes are also subject to the sales tax.

Section 210.01(6), F.S., defines “wholesale dealer” to mean “any person located inside or outside this state who sells cigarettes to retail dealers or other persons for purposes of resale only.” Section 210.01(7), F.S., defines “retail dealer” to mean any person located inside or outside this state other than a wholesale dealer engaged in the business of selling cigarettes.”

Section 210.01(21), F.S., defines “manufacturer” to mean “any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 that manufactures, fabricates, assembles, processes, or labels a finished cigarette.”

Part II of chapter 210, F.S., defines “tobacco products” to mean loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

Section 210.01(1), F.S., defines “cigarette” to mean any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Tobacco licenses, permits, and penalties

Section 210.16, F.S., specifies, in part, that “the division may suspend for a reasonable period of time or revoke, in its discretion, the permits issued under the provisions of this part or chapter 569 to any person who has violated any other provision of this part or chapter 569.” This section also provides that “in addition to the suspension or revocation of permits, the division may impose civil penalties against holders of permits for violations of this part or rules and regulations relating thereto.”

Chapter 569, F.S., sets forth the licensing and regulatory scheme for persons selling tobacco products. The division is charged with the supervision of the distribution of cigarettes and other tobacco products, permitting of cigarette distributing agents, wholesale dealers, exporters and retail dealers, collection of related taxes and fees, and imposing penalties for violations of the tobacco laws.

¹ S. 561.02, F.S.

Proposed changes

Manufacturer definition

The bill modifies the definition of manufacturer, under s. 210.01(21), F.S., to include a person or entity that provides for, or leases, the use of a machine at a retail establishment that enables any person to fabricate, assemble, or process at that establishment tobacco products as defined in s. 210.25(11), into a roll or tube for smoking. This section of the bill will become effective July 1, 2014.

Tobacco sales on credit and license suspension

The bill also amends s. 210.16, F.S. to authorize credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer. In circumstances where the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer, the bill allows the wholesaler to petition the division for additional administrative action.

The bill further provides, in s. 210.16, F.S., that when the wholesaler has obtained a civil judgment from an appropriate court for nonpayment of debt which has been incurred for the purchase of tobacco products by a tobacco retailer the wholesaler may petition the division to suspend or to deny renewal of the tobacco retailer's tobacco permit for reasons of nonpayment of debt. The tobacco retailer will be unable to renew the tobacco permit until the retail dealer submits proof to the division that arrangements for payment have been agreed to between the parties or that the civil judgment against the retail dealer has been satisfied in full.

B. SECTION DIRECTORY:

Section 1: Amends s. 210.01, F.S., to amend the definition of "manufacturer" for purposes of regulation and taxation of tobacco products, and provides an effective date of July 1, 2014.

Section 2: Amends s. 210.16, F.S., to authorize credit for the sale of tobacco products to be extended to a retail dealer at the discretion of a wholesale dealer, and establish, under specified conditions, for the suspension of the sale of tobacco products to retail dealers who are delinquent in their credit payments.

Section 3: Amends s. 210.181, F.S., to conform a cross reference.

Section 4: Provides for an effective date of July 1, 2012, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not reviewed this bill. Staff estimates the provisions in this bill will have an indeterminate positive state revenue impact as a result of additional taxes and license fees collected by the division from manufacturers.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on the retail establishments that provide services for machine rolled cigarettes as it relates to tobacco manufacturing license fees and taxes that will be required to be paid.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Business & Consumer Affairs adopted a strike-all amendment and an amendment to the strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- removes provisions that would have established a delinquent list procedure for transactions between a tobacco distributor and a retail tobacco dealer based on language currently used for the extension of credit for the purchase of alcoholic beverage and established a collection mechanism for tobacco product payments which are delinquent;
- modifies the definition of manufacturer, to include a person or entity that provides for the use of a machine located at a retail establishment that enables a person to roll tobacco products into a tube for smoking; and
- provides for the suspension of a permit for the sale of tobacco products by a retail dealer who is delinquent in credit payments to a wholesale dealer.

On February 15, 2012, the Finance & Tax Committee adopted 2 amendments. The first amendment provided an effective date for section 1 to be July 1, 2014. The second amendment provided that the bill will be effective July 1, 2012, except as otherwise provided in the bill.

This analysis reflects the changes made by these amendments.