

1 A bill to be entitled

2 An act relating to tax-exempt cigarettes; amending s.
3 210.01, F.S.; providing definitions; amending s.
4 210.05, F.S.; authorizing agents and wholesale dealers
5 to sell stamped and untaxed cigarettes to tribal
6 business entities; authorizing agents and wholesale
7 dealers to file a claim with the Division of Alcoholic
8 Beverages and Tobacco for a refund of specified taxes
9 and surcharges; repealing s. 210.1801, F.S., relating
10 to exempt cigarettes for members of recognized Indian
11 tribes; creating s. 210.221, F.S.; providing
12 legislative intent; authorizing tribal business
13 entities to purchase stamped and untaxed cigarettes
14 from agents and wholesale dealers; authorizing
15 licensed tribal smoke shops to purchase tax-exempt
16 cigarettes from tribal business entities; authorizing
17 licensed tribal smoke shops to sell tax-exempt
18 cigarettes at retail on an Indian reservation to
19 tribal members and nontribal members; requiring
20 certain entities to maintain specified documentation
21 relating to the purchase or sale of tax-exempt
22 cigarettes; prohibiting the purchase by a nontribal
23 member of more than a specified number of cartons of
24 tax-exempt cigarettes within a specified period;
25 providing a penalty; creating s. 210.222, F.S.;
26 requiring a license to own or operate a tribal smoke

27 shop; requiring tribal business entities to adopt
28 rules and regulations; requiring certain tribal
29 business entities to a create a fund for a specified
30 purpose; requiring certain tribal business entities to
31 use certain profits for a specified purpose;
32 authorizing the division to inspect certain accounts
33 and the use of certain funds; providing an effective
34 date.

35

36 WHEREAS, in April 1977, the first smoke shop operated by
37 the Seminole Indian Tribe of Florida opened, selling tax-exempt
38 cigarettes to the public, and

39 WHEREAS, authorized by the laws of this state, the Seminole
40 Indian Tribe of Florida operated smoke shops selling tax-exempt
41 cigarettes to the public from 1979 until 2009, and

42 WHEREAS, in 2009, the Legislature enacted chapter 2009-79,
43 Laws of Florida, effectively revoking the Seminole Indian Tribe
44 of Florida's authority to sell tax-exempt cigarettes to
45 nontribal members, and

46 WHEREAS, chapter 2009-79, Laws of Florida, preserved a
47 portion of the Seminole Indian Tribe of Florida's tax-exempt
48 cigarette revenues by allowing the sale of tax-exempt cigarettes
49 to tribal members, and

50 WHEREAS, in order to comply with the laws of this state,
51 the Seminole Indian Tribe of Florida and tribal retailers are
52 forced to engage in presumptions and procedures which, but for

53 the wording of chapter 2009-79, Laws of Florida, would be
 54 against the law, and

55 WHEREAS, the Seminole Indian Tribe of Florida desires to
 56 resume the sale of tax-exempt cigarettes to nontribal members,
 57 and to use the revenues generated from such sales for tribal
 58 health care services, which include, but are not limited to, the
 59 purchase of diagnostic and other medical equipment, the hiring
 60 of medical personnel, and the expansion and creation of
 61 facilities to increase the quality of health care for all tribal
 62 members, especially those members on remote reservations that
 63 are currently underserved, NOW, THEREFORE,

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Subsections (23), (24), and (25) are added to
 68 section 210.01, Florida Statutes, to read:

69 210.01 Definitions.—When used in this part the following
 70 words shall have the meaning herein indicated:

71 (23) "Tax-exempt cigarettes" means cigarettes exempt from
 72 the cigarette tax under s. 210.02 and the cigarette surcharge
 73 under s. 210.011.

74 (24) "Tribal business entity" means a federally chartered
 75 corporation charged with the duty of creating, expanding, and
 76 developing business enterprises for the economic betterment of a
 77 recognized Indian tribe.

78 (25) "Tribal smoke shop" means an entity located on an

79 Indian reservation that sells tax-exempt cigarettes to members
 80 of an Indian tribe recognized by this state and to nontribal
 81 members.

82 Section 2. Subsection (5) of section 210.05, Florida
 83 Statutes, is amended to read:

84 210.05 Preparation and sale of stamps; discount.—

85 (5) (a) Agents or wholesale dealers may sell stamped and
 86 untaxed cigarettes to a tribal business entity for retail sale
 87 on an Indian reservation. Agents or wholesale dealers shall
 88 treat such cigarettes and the sale thereof in the same manner,
 89 with respect to reporting and stamping, as other sales under
 90 this part. Agents or wholesale dealers shall not collect from
 91 the purchaser the tax imposed by s. 210.02 or the cigarette
 92 surcharge imposed by s. 210.011. The purchaser under this
 93 subsection is responsible to the agent or wholesale dealer for
 94 the services and expenses incurred in affixing the stamps and
 95 accounting therefor.

96 (b) A wholesale dealer or agent may file a claim for a
 97 refund from the division for any cigarette tax or surcharge paid
 98 for cigarettes that the wholesale dealer sells to a tribal
 99 business entity pursuant to this subsection. The division is
 100 authorized to reimburse wholesale dealers and agents for
 101 cigarette taxes or surcharges paid for cigarettes sold to a
 102 tribal business entity under this subsection. ~~Cigarettes sold to~~
 103 ~~the Seminole Indian Tribe of Florida shall be administered as~~
 104 ~~provided in s. 210.1801.~~

105 Section 3. Section 210.1801, Florida Statutes, is
 106 repealed.

107 Section 4. Section 210.221, Florida Statutes, is created
 108 to read:

109 210.221 Tax-exempt cigarettes sold on an Indian
 110 reservation.-

111 (1) It is the intent of the Legislature that:

112 (a) The retail sale of tax-exempt cigarettes be permitted
 113 on Indian reservations by tribal smoke shops licensed under s.
 114 210.222.

115 (b) Members of an Indian tribe recognized in this state
 116 and nontribal members be permitted to purchase such tax-exempt
 117 cigarettes from licensed tribal smoke shops.

118 (c) Tax-exempt cigarettes be distributed to tribal smoke
 119 shops by tribal business entities as prescribed in this section.

120 (2) Notwithstanding any other provision of law, a tribal
 121 business entity may purchase stamped and untaxed cigarettes from
 122 agents or wholesale dealers for retail sale in accordance with
 123 s. 210.05(5). A tribal business entity may only sell or
 124 distribute such tax-exempt cigarettes to a tribal smoke shop
 125 licensed under s. 210.222.

126 (3) (a) A licensed tribal smoke shop may purchase tax-
 127 exempt cigarettes from a tribal business entity even though the
 128 cigarettes have an affixed cigarette tax-and-surcharge stamp.

129 (b) A licensed tribal smoke shop may only sell tax-exempt
 130 cigarettes on an Indian reservation.

131 (c) A licensed tribal smoke shop may sell tax-exempt
 132 cigarettes at retail to members of an Indian tribe recognized in
 133 this state and to nontribal members.

134 (4) Each agent, wholesale dealer, and tribal business
 135 entity that purchases or sells tax-exempt cigarettes shall keep
 136 records of each transaction involving the sale of such tax-
 137 exempt cigarettes and shall submit appropriate documentation to
 138 the division. Documentation must contain the identities of the
 139 parties involved in the transaction, the identity and quantity
 140 of the product sold or purchased, and any other information that
 141 the division may deem appropriate.

142 (5) A person who purchases more than three cartons of tax-
 143 exempt cigarettes from a licensed tribal smoke shop within a 7-
 144 day period commits a misdemeanor of the second degree,
 145 punishable as provided in s. 775.082 or s. 775.083.

146 Section 5. Section 210.222, Florida Statutes, is created
 147 to read:

148 210.222 Licensing of tribal smoke shops; tribal business
 149 entity requirements.-

150 (1) A person may not own or operate a tribal smoke shop
 151 without a license issued by a tribal business entity.

152 (2) Each tribal business entity shall adopt rules and
 153 regulations for the licensing of tribal smoke shops.

154 (a) Each tribal business entity may adopt rules creating
 155 classifications that permit tribal smoke shops to be
 156 individually owned or owned by the tribal business entity and

157 operated by a licensee.

158 (b) Each tribal entity shall adopt rules designed to
159 monitor and enforce the three-carton limit provided in s.
160 210.221(5). The rules and regulations must require licensed
161 tribal smoke shops to:

162 1. Use surveillance cameras to capture images or video of
163 each customer who purchases tax-exempt cigarettes and his or her
164 car and license plate.

165 2. Record the driver license number of each customer who
166 purchases tax-exempt cigarettes.

167 3. Display a large sign inside the store that is clearly
168 legible and conspicuous that gives notice of the three-carton
169 limit and warns customers of the surveillance cameras in use.

170 4. Report to the tribal business entity any violations or
171 attempted violations of s. 210.221(5) at least monthly.

172 (c) Each tribal business entity shall adopt rules and
173 procedures for imposing fines against and suspending and
174 revoking the license of a tribal smoke shop that violates or
175 fails to adhere to the rules and regulations adopted by the
176 tribal business entity.

177 (3) A tribal business entity may charge a tribal smoke
178 shop owner or operator a reasonable license fee.

179 (4) Each tribal business entity that purchases stamped but
180 untaxed cigarettes from an agent or wholesaler pursuant to s.
181 210.05(5), must create a fund dedicated exclusively to funding
182 tribal health care. Three-fifths of all license fees collected

183 by a tribal business entity shall be deposited into the fund.
184 The fund shall be used to support medical clinics, expand and
185 create medical facilities, purchase diagnostic equipment, create
186 systems that will improve the sharing of medical records by and
187 between the various reservations, and to staff medical
188 facilities maintaining a primary emphasis on the needs of tribal
189 members residing on remote reservations.

190 (5) Each tribal business entity that purchases stamped and
191 untaxed cigarettes from an agent or wholesaler pursuant to s.
192 210.05(5), must use all profits derived from the sale of tax-
193 exempt cigarettes to fund law enforcement, fire prevention,
194 tribal housing, and youth recreation.

195 (6) Any accounts established by a tribal business entity
196 containing funds derived from tax-exempt cigarette sales,
197 including, but not limited to, any account established pursuant
198 to subsection (4) or subsection (5), and the use of such funds
199 shall be open to inspection by the division.

200 Section 6. This act shall take effect July 1, 2014.