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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(23) "Tax-exempt cigarettes" means cigarettes exempt from  
the cigarette excise tax under s. 210.02 and the cigarette



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11 surcharge under s. 210.011.

12 (24) "Tribal business entity" means a federally chartered  
13 corporation charged with the duty of creating, expanding, and  
14 developing business enterprises for the economic betterment of a  
15 recognized Indian tribe.

16 (25) "Tribal smoke shop" means an entity located on an  
17 Indian reservation which is authorized to sell tax-exempt  
18 cigarettes to members of an Indian tribe recognized by this  
19 state and to the public.

20 Section 2. Subsection (5) of section 210.05, Florida  
21 Statutes, is amended, and subsection (6) is added to that  
22 section, to read:

23 210.05 Preparation and sale of stamps; discount.-

24 (5) An agent or wholesale dealer may sell stamped and  
25 untaxed cigarettes for retail sale on an Indian reservation to  
26 no more than one tribal business entity per recognized Indian  
27 tribe. With respect to reporting and stamping, the agent or  
28 wholesale dealer shall treat such cigarettes and the sale  
29 thereof in the same manner as other sales under this part. The  
30 agent or wholesale dealer may not collect from the tribal  
31 business entity the cigarette excise tax imposed under s. 210.02  
32 or the cigarette surcharge imposed under s. 210.011. The tribal  
33 business entity is responsible to the agent or wholesale dealer  
34 for the services and expenses incurred in affixing and  
35 accounting for the stamps ~~Cigarettes sold to the Seminole Indian~~  
36 ~~Tribes of Florida shall be administered as provided in s.~~  
37 ~~210.1801.~~

38 (6) An agent or wholesale dealer may file a claim for a  
39 refund from the division for any cigarette tax or surcharge paid



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40 on cigarettes that the wholesale dealer sells to a tribal  
41 business entity pursuant to this section. The division may  
42 reimburse the agent or wholesale dealer for cigarette taxes or  
43 surcharges paid on cigarettes sold to a tribal business entity  
44 under this section.

45 Section 3. Section 210.1801, Florida Statutes, is repealed.

46 Section 4. Section 210.221, Florida Statutes, is created to  
47 read:

48 210.221 Tax-exempt cigarettes sold on an Indian  
49 reservation.-

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

51 (a) The retail sale of tax-exempt cigarettes be permitted  
52 on Indian reservations by tribal smoke shops authorized to  
53 operate under s. 210.222.

54 (b) Members of an Indian tribe recognized in this state and  
55 members of the public be permitted to purchase such tax-exempt  
56 cigarettes from authorized tribal smoke shops.

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

59 (2) Notwithstanding any other law, a tribal business entity  
60 may purchase stamped and untaxed cigarettes from agents or  
61 wholesale dealers for retail sale in accordance with s.  
62 210.05(5) and (6). A tribal business entity may sell or  
63 distribute such tax-exempt cigarettes only to a tribal smoke  
64 shop authorized to operate under s. 210.222. The maximum number  
65 of tax-exempt cigarettes that may be purchased and sold annually  
66 by a tribal business entity is calculated by multiplying the  
67 number of members of the tribe times five packs of cigarettes  
68 times 365.



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69       (3) An authorized tribal smoke shop may:  
70       (a) Purchase tax-exempt cigarettes from a tribal business  
71 entity even though the cigarettes have an affixed cigarette tax-  
72 and-surcharge stamp.  
73       (b) Sell tax-exempt cigarettes on an Indian reservation  
74 only.  
75       (c) Sell tax-exempt cigarettes at retail to members of an  
76 Indian tribe recognized in this state and to the public.  
77       (4) Each agent, wholesale dealer, or tribal business entity  
78 that purchases or sells tax-exempt cigarettes shall keep records  
79 of each such transaction and shall submit appropriate  
80 documentation to the division. Documentation must contain the  
81 identity of the parties involved in the transaction, the  
82 identity and quantity of the product sold or purchased, and any  
83 other information that the division may deem appropriate.  
84       (5) A member of the public who purchases or possesses more  
85 than three cartons of tax-exempt cigarettes from a tribal smoke  
86 shop within a 7-day period commits a misdemeanor of the second  
87 degree, punishable as provided in s. 775.082 or s. 775.083.  
88       Section 5. Section 210.222, Florida Statutes, is created to  
89 read:  
90       210.222 Tribal smoke shop requirements.—  
91       (1) A person may not own or operate a tribal smoke shop  
92 without being issued a certificate of authority to operate by a  
93 tribal business entity. A tribal business entity may charge a  
94 tribal smoke shop owner or operator a reasonable fee for the  
95 certificate of authority.  
96       (2) Each tribal business entity shall adopt written  
97 procedures and criteria for authorizing tribal smoke shops to



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98 sell tax-exempt cigarettes. Such requirements:

99 (a) May authorize tribal smoke shops to be individually  
100 owned and operated, or owned by the tribal business entity and  
101 operated by an authorized tribal smoke shop.

102 (b) Must provide for monitoring and enforcing the purchase  
103 limit of three cartons within a 7-day period as specified in s.  
104 210.221(5). In order to monitor the three-carton limit,  
105 authorized drive-through tribal smoke shops must, at a minimum:

106 1. Use surveillance cameras that capture images or a video  
107 of each customer who purchases tax-exempt cigarettes and his or  
108 her car and license plate.

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

111 3. Display a large sign inside the store which is clearly  
112 legible and conspicuous to customers and which gives notice of  
113 the 3-carton limit and warns customers of the surveillance  
114 cameras in use.

115 4. Report at least monthly to the tribal business entity  
116 any violation or attempted violation of s. 210.221(5).

117 (3) Each tribal business entity shall adopt written  
118 requirements establishing procedures for imposing fines against,  
119 and for suspending and revoking the certificate of authority of,  
120 a tribal smoke shop that violates or fails to adhere to the  
121 requirements in 210.221 relating to the retail sale of tax-  
122 exempt cigarettes adopted by the tribal business entity.

123 (4) Each tribal business entity that purchases stamped but  
124 untaxed cigarettes from an agent or wholesaler pursuant to s.  
125 210.05(5), must deposit all cigarette revenues into a fund  
126 dedicated exclusively to funding tribal health care, including



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127 the creation of a Tribal Comprehensive Tobacco Education and Use  
128 Prevention Program modeled after the program created under s.  
129 381.84.

130 (5) Any accounts established by a tribal business entity  
131 which contain funds derived from tax-exempt cigarette sales,  
132 including, but not limited to, an account established pursuant  
133 to subsection (4), and the use of such funds must be open to  
134 inspection by the division.

135 Section 6. Paragraph (a) of subsection (4) of section  
136 381.84, Florida Statutes, is amended to read:

137 381.84 Comprehensive Statewide Tobacco Education and Use  
138 Prevention Program.—

139 (4) ADVISORY COUNCIL; MEMBERS, APPOINTMENTS, AND MEETINGS.—  
140 The Tobacco Education and Use Prevention Advisory Council is  
141 created within the department.

142 (a) The council shall consist of 25 ~~23~~ members, including:

143 1. The State Surgeon General, who shall serve as the  
144 chairperson.

145 2. One county health department director, appointed by the  
146 State Surgeon General.

147 3. Two members appointed by the Commissioner of Education,  
148 of whom one must be a school district superintendent.

149 4. The chief executive officer of the Florida Division of  
150 the American Cancer Society, or his or her designee.

151 5. The chief executive officer of the Greater Southeast  
152 Affiliate of the American Heart Association, or his or her  
153 designee.

154 6. The chief executive officer of the American Lung  
155 Association of Florida, or his or her designee.



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- 156           7. The dean of the University of Miami School of Medicine,  
157 or his or her designee.
- 158           8. The dean of the University of Florida College of  
159 Medicine, or his or her designee.
- 160           9. The dean of the University of South Florida College of  
161 Medicine, or his or her designee.
- 162           10. The dean of the Florida State University College of  
163 Medicine, or his or her designee.
- 164           11. The dean of Nova Southeastern College of Osteopathic  
165 Medicine, or his or her designee.
- 166           12. The dean of the Lake Erie College of Osteopathic  
167 Medicine in Bradenton, Florida, or his or her designee.
- 168           13. The chief executive officer of the Campaign for Tobacco  
169 Free Kids, or his or her designee.
- 170           14. The chief executive officer of the Legacy Foundation,  
171 or his or her designee.
- 172           15. Six ~~Four~~ members appointed by the Governor, of whom:
- 173           a. Two must have expertise in the field of tobacco-use  
174 prevention and education or tobacco-use cessation;
- 175           b. Two must be members of the Seminole Indian Tribe of  
176 Florida, of whom one must be a member of the Tribal  
177 Comprehensive Tobacco Education and Use Prevention Program; and
- 178           c. One must ~~individual who shall~~ be between the ages of 16  
179 and 21 at the time of his or her appointment.
- 180           16. Two members appointed by the President of the Senate,  
181 of whom one must have expertise in the field of tobacco-use  
182 prevention and education or tobacco-use cessation.
- 183           17. Two members appointed by the Speaker of the House of  
184 Representatives, of whom one must have expertise in the field of



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185 tobacco-use prevention and education or tobacco-use cessation.

186 Section 7. This act shall take effect July 1, 2014.

187

188 ===== T I T L E A M E N D M E N T =====

189 And the title is amended as follows:

190 Delete everything before the enacting clause

191 and insert:

192 A bill to be entitled

193 An act relating to tax-exempt cigarettes; amending s.  
194 210.01, F.S.; defining terms; amending s. 210.05,  
195 F.S.; authorizing agents and wholesale dealers to sell  
196 stamped and untaxed cigarettes to tribal business  
197 entities; authorizing agents and wholesale dealers to  
198 file a claim with the Division of Alcoholic Beverages  
199 and Tobacco for a refund of specified taxes and  
200 surcharges; conforming a cross-reference; amending s.  
201 210.1801, F.S., relating to the sale of tax-exempt  
202 cigarettes to members of recognized Indian tribes;  
203 creating s. 210.221, F.S.; providing legislative  
204 intent; authorizing tribal business entities to  
205 purchase stamped and untaxed cigarettes from agents  
206 and wholesale dealers; providing a cap on the amount  
207 of cigarettes that may be purchased and sold annually;  
208 authorizing certain tribal smoke shops to purchase  
209 tax-exempt cigarettes from tribal business entities  
210 and to sell such cigarettes at retail on an Indian  
211 reservation to tribal members and the public;  
212 requiring specified entities to maintain documentation  
213 relating to the purchase or sale of tax-exempt





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214 cigarettes; prohibiting the purchase of more than a  
215 specified number of cartons of tax-exempt cigarettes  
216 within a specified period; providing a penalty;  
217 creating s. 210.222, F.S.; requiring a certificate of  
218 authority to own or operate a tribal smoke shop;  
219 requiring tribal business entities to adopt related  
220 requirements; requiring tribal business entities that  
221 purchase tax-exempt cigarettes to deposit all  
222 cigarette revenues into a fund to be used for tribal  
223 health care including the establishment of a Tribal  
224 Comprehensive Tobacco Education and Use Prevention  
225 Program; authorizing the division to inspect the  
226 accounts and the use of certain funds derived from the  
227 sale of tax-exempt cigarettes; amending s. 381.84,  
228 F.S.; adding two members of the Seminole Indian Tribe  
229 of Florida to the Tobacco Education and Use Prevention  
230 Program Council; providing an effective date.

231  
232 WHEREAS, in April 1977, the first smoke shop operated by  
233 the Seminole Indian Tribe of Florida opened, selling tax-exempt  
234 cigarettes to the public, and

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

238 WHEREAS, in 2009, the Legislature enacted chapter 2009-79,  
239 Laws of Florida, effectively revoking the Seminole Indian Tribe  
240 of Florida's authority to sell tax-exempt cigarettes to the  
241 public, and

242 WHEREAS, chapter 2009-79, Laws of Florida, preserved a



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243 portion of the Seminole Indian Tribe of Florida's tax-exempt  
244 cigarette revenues by allowing the sale of tax-exempt cigarettes  
245 to tribal members, and

246 WHEREAS, current law creates a system whereby the Seminole  
247 Indian Tribe of Florida is given excise tax and surcharge  
248 exemption coupons based on the probable demand of tribal members  
249 for cigarettes, with probable demand defined as five packages of  
250 cigarettes per day for every man, woman, and child member of the  
251 tribe, and the coupons are used to buy tax-exempt cigarettes  
252 from a wholesale dealer who submits such coupons to the division  
253 for a refund of taxes paid by the wholesale dealer, and

254 WHEREAS, the Seminole Indian Tribe of Florida desires to  
255 resume the sale of tax-exempt cigarettes to the public and to  
256 use the revenues generated from such sales for tribal health  
257 care services, including, but not limited to, the creation of a  
258 Tribal Comprehensive Tobacco Education and Use Prevention  
259 Program modeled after the program created under s. 381.84, F.S.,  
260 and the creation and expansion of medical facilities to increase  
261 the quality of health care for all tribal members, especially  
262 those members on remote reservations that are currently  
263 underserved, NOW, THEREFORE,