

By Senator Evers

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1 A bill to be entitled
2 An act relating to tax-exempt cigarettes; amending s.
3 210.01, F.S.; defining terms; amending s. 210.05,
4 F.S.; authorizing agents and wholesale dealers to sell
5 stamped and untaxed cigarettes to tribal business
6 entities; authorizing agents and wholesale dealers to
7 file a claim with the Division of Alcoholic Beverages
8 and Tobacco for a refund of specified taxes and
9 surcharges; conforming a cross-reference; repealing s.
10 210.1801, F.S., relating to the sale of tax-exempt
11 cigarettes to members of recognized Indian tribes;
12 creating s. 210.221, F.S.; providing legislative
13 intent; authorizing tribal business entities to
14 purchase stamped and untaxed cigarettes from agents
15 and wholesale dealers; authorizing certain tribal
16 smoke shops to purchase tax-exempt cigarettes from
17 tribal business entities and to sell such cigarettes
18 at retail on an Indian reservation to tribal members
19 and the public; requiring specified entities to
20 maintain documentation relating to the purchase or
21 sale of tax-exempt cigarettes; prohibiting the
22 purchase of more than a specified number of cartons of
23 tax-exempt cigarettes within a specified period;
24 providing a penalty; creating s. 210.222, F.S.;
25 requiring a certificate of authority to own or operate
26 a tribal smoke shop; requiring tribal business
27 entities to adopt related requirements; requiring
28 tribal business entities that purchase tax-exempt
29 cigarettes to a create a fund for a specified purpose;

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30 requiring such tribal business entities to use certain
31 profits for a specified purpose; authorizing the
32 division to inspect the accounts and the use of
33 certain funds derived from the sale of tax-exempt
34 cigarettes; providing an effective 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 the
45 public, 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, current law creates a system whereby the Seminole
51 Indian Tribe of Florida is given excise tax and surcharge
52 exemption coupons based on the probable demand for cigarettes,
53 with probable demand defined as five packages of cigarettes per
54 day for every man, woman, and child member of the tribe, and the
55 coupons are used to buy tax-exempt cigarettes from a wholesale
56 dealer who submits such coupons to the division for a refund of
57 taxes paid by the wholesale dealer, and

58 WHEREAS, the Seminole Indian Tribe of Florida desires to

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59 resume the sale of tax-exempt cigarettes to the public and to
60 use the revenues generated from such sales for tribal health
61 care services, which include, but are not limited to, the
62 purchase of diagnostic and other medical equipment, the hiring
63 and retention of medical personnel, the improvement of medical
64 recordkeeping and the sharing of medical records between the
65 various reservations, the use of telehealth, and the creation
66 and expansion of medical facilities to increase the quality of
67 health care for all tribal members, especially those members on
68 remote reservations that are currently underserved, NOW,
69 THEREFORE,

70

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

72

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

75 210.01 Definitions.—When used in this part the following
76 words shall have the meaning herein indicated:

77 (23) "Tax-exempt cigarettes" means cigarettes exempt from
78 the cigarette excise tax under s. 210.02 and the cigarette
79 surcharge under s. 210.011.

80 (24) "Tribal business entity" means a federally chartered
81 corporation charged with the duty of creating, expanding, and
82 developing business enterprises for the economic betterment of a
83 recognized Indian tribe.

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

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88 Section 2. Subsection (5) of section 210.05, Florida
89 Statutes, is amended, and subsection (6) is added to that
90 section, to read:

91 210.05 Preparation and sale of stamps; discount.—

92 (5) An agent or wholesale dealer may sell stamped and
93 untaxed cigarettes to a tribal business entity for retail sale
94 on an Indian reservation. With respect to reporting and
95 stamping, the agent or wholesale dealer shall treat such
96 cigarettes and the sale thereof in the same manner as other
97 sales under this part. The agent or wholesale dealer may not
98 collect from the tribal business entity the cigarette excise tax
99 imposed under s. 210.02 or the cigarette surcharge imposed under
100 s. 210.011. The tribal business entity is responsible to the
101 agent or wholesale dealer for the services and expenses incurred
102 in affixing the stamps and accounting therefor ~~Cigarettes sold~~
103 ~~to the Seminole Indian Tribe of Florida shall be administered as~~
104 ~~provided in s. 210.1801.~~

105 (6) An agent or wholesale dealer may file a claim for a
106 refund from the division for any cigarette tax or surcharge paid
107 on cigarettes that the wholesale dealer sells to a tribal
108 business entity pursuant to this section. The division may
109 reimburse the agent or wholesale dealer for cigarette taxes or
110 surcharges paid on cigarettes sold to a tribal business entity
111 under this section.

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

113 Section 4. Section 210.221, Florida Statutes, is created to
114 read:

115 210.221 Tax-exempt cigarettes sold on an Indian
116 reservation.—

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- 117 (1) It is the intent of the Legislature that:
- 118 (a) The retail sale of tax-exempt cigarettes be permitted
119 on Indian reservations by tribal smoke shops authorized to
120 operate under s. 210.222.
- 121 (b) Members of an Indian tribe recognized in this state and
122 members of the public be permitted to purchase such tax-exempt
123 cigarettes from authorized tribal smoke shops.
- 124 (c) Tax-exempt cigarettes be distributed to tribal smoke
125 shops by tribal business entities as prescribed in this section.
- 126 (2) Notwithstanding any other law, a tribal business entity
127 may purchase stamped and untaxed cigarettes from agents or
128 wholesale dealers for retail sale in accordance with s.
129 210.05(5) and (6). A tribal business entity may sell or
130 distribute such tax-exempt cigarettes only to a tribal smoke
131 shop authorized to operate under s. 210.222.
- 132 (3) An authorized tribal smoke shop may:
- 133 (a) Purchase tax-exempt cigarettes from a tribal business
134 entity even though the cigarettes have an affixed cigarette tax-
135 and-surcharge stamp.
- 136 (b) Sell tax-exempt cigarettes on an Indian reservation
137 only.
- 138 (c) Sell tax-exempt cigarettes at retail to members of an
139 Indian tribe recognized in this state and to the public.
- 140 (4) Each agent, wholesale dealer, or tribal business entity
141 that purchases or sells tax-exempt cigarettes shall keep records
142 of each such transaction and shall submit appropriate
143 documentation to the division. Documentation must contain the
144 identity of the parties involved in the transaction, the
145 identity and quantity of the product sold or purchased, and any

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146 other information that the division may deem appropriate.

147 (5) A tribal member or member of the public who purchases
148 more than three cartons of tax-exempt cigarettes from a tribal
149 smoke shop within a 7-day period commits a misdemeanor of the
150 second degree, punishable as provided in s. 775.082 or s.
151 775.083.

152 Section 5. Section 210.222, Florida Statutes, is created to
153 read:

154 210.222 Tribal smoke shop requirements.-

155 (1) A person may not own or operate a tribal smoke shop
156 without being issued a certificate of authority to operate by a
157 tribal business entity. A tribal business entity may charge a
158 tribal smoke shop owner or operator a reasonable fee for the
159 certificate of authority.

160 (2) Each tribal business entity shall adopt written
161 procedures and criteria for authorizing tribal smoke shops to
162 sell tax-exempt cigarettes. Such requirements:

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

166 (b) Must provide for monitoring and enforcing the purchase
167 limit of three cartons within a 7-day period as specified in s.
168 210.221(5). In order to monitor the three-carton limit,
169 authorized tribal smoke shops must, at a minimum:

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

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

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175 3. Display a large sign inside the store which is clearly
176 legible and conspicuous to customers and which gives notice of
177 the 3-carton limit and warns customers of the surveillance
178 cameras in use.

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

181 (3) Each tribal business entity shall adopt written
182 requirements establishing procedures for imposing fines against,
183 and for suspending and revoking the certificate of authority of,
184 a tribal smoke shop that violates or fails to adhere to the
185 requirements in 210.221 relating to the retail sale of tax-
186 exempt cigarettes adopted by the tribal business entity.

187 (4) Each tribal business entity that purchases stamped but
188 untaxed cigarettes from an agent or wholesaler pursuant to s.
189 210.05(5), must create a fund dedicated exclusively to funding
190 tribal health care. Three-fifths of all fees collected by a
191 tribal business entity shall be deposited into the fund. The
192 fund shall be used to support medical clinics, to expand and
193 create medical facilities, to purchase diagnostic equipment, to
194 create systems that will improve the sharing of medical records
195 by and between the various reservations, and to staff medical
196 facilities that maintain a primary emphasis on the needs of
197 tribal members residing on remote reservations.

198 (5) Each tribal business entity that purchases stamped and
199 untaxed cigarettes from an agent or wholesaler pursuant to s.
200 210.05(5) must use all profits derived from the sale of tax-
201 exempt cigarettes to fund law enforcement, fire prevention,
202 tribal housing, and youth recreation.

203 (6) Any accounts established by a tribal business entity

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204 containing funds derived from tax-exempt cigarette sales,
205 including, but not limited to, an account established pursuant
206 to subsection (4) or subsection (5), and the use of such funds
207 must be open to inspection by the division.

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