

By the Committee on Regulated Industries; and 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; providing a cap on the amount
16 of cigarettes that may be purchased and sold annually;
17 authorizing certain tribal smoke shops to purchase
18 tax-exempt cigarettes from tribal business entities
19 and to sell such cigarettes at retail on an Indian
20 reservation to tribal members and the public;
21 requiring specified entities to maintain documentation
22 relating to the purchase or sale of tax-exempt
23 cigarettes; prohibiting the purchase of more than a
24 specified number of cartons of tax-exempt cigarettes
25 within a specified period; providing a penalty;
26 creating s. 210.222, F.S.; requiring a certificate of
27 authority to own or operate a tribal smoke shop;
28 requiring tribal business entities to adopt related
29 requirements; requiring tribal business entities that

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30 purchase tax-exempt cigarettes to deposit all
31 cigarette revenues into a fund to be used for tribal
32 health care including the establishment of a Tribal
33 Comprehensive Tobacco Education and Use Prevention
34 Program; authorizing the division to inspect the
35 accounts and the use of certain funds derived from the
36 sale of tax-exempt cigarettes; amending s. 381.84,
37 F.S.; adding two members of the Seminole Indian Tribe
38 of Florida to the Tobacco Education and Use Prevention
39 Program Council; providing an effective date.
40

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

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

47 WHEREAS, in 2009, the Legislature enacted chapter 2009-79,
48 Laws of Florida, effectively revoking the Seminole Indian Tribe
49 of Florida's authority to sell tax-exempt cigarettes to the
50 public, and

51 WHEREAS, chapter 2009-79, Laws of Florida, preserved a
52 portion of the Seminole Indian Tribe of Florida's tax-exempt
53 cigarette revenues by allowing the sale of tax-exempt cigarettes
54 to tribal members, and

55 WHEREAS, current law creates a system whereby the Seminole
56 Indian Tribe of Florida is given excise tax and surcharge
57 exemption coupons based on the probable demand of tribal members
58 for cigarettes, with probable demand defined as five packages of

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59 cigarettes per day for every man, woman, and child member of the
60 tribe, and the coupons are used to buy tax-exempt cigarettes
61 from a wholesale dealer who submits such coupons to the division
62 for a refund of taxes paid by the wholesale dealer, and

63 WHEREAS, the Seminole Indian Tribe of Florida desires to
64 resume the sale of tax-exempt cigarettes to the public and to
65 use the revenues generated from such sales for tribal health
66 care services, including, but not limited to, the creation of a
67 Tribal Comprehensive Tobacco Education and Use Prevention
68 Program modeled after the program created under s. 381.84, F.S.,
69 and the creation and expansion of medical facilities to increase
70 the quality of health care for all tribal members, especially
71 those members on remote reservations that are currently
72 underserved, NOW, THEREFORE,

73

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

75

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

78 210.01 Definitions.—When used in this part the following
79 words shall have the meaning herein indicated:

80 (23) "Tax-exempt cigarettes" means cigarettes exempt from
81 the cigarette excise tax under s. 210.02 and the cigarette
82 surcharge under s. 210.011.

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

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

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88 Indian reservation which is authorized to sell tax-exempt
89 cigarettes to members of an Indian tribe recognized by this
90 state and to the public.

91 Section 2. Subsection (5) of section 210.05, Florida
92 Statutes, is amended, and subsection (6) is added to that
93 section, to read:

94 210.05 Preparation and sale of stamps; discount.-

95 (5) An agent or wholesale dealer may sell stamped and
96 untaxed cigarettes for retail sale on an Indian reservation to
97 no more than one tribal business entity per recognized Indian
98 tribe. With respect to reporting and stamping, the agent or
99 wholesale dealer shall treat such cigarettes and the sale
100 thereof in the same manner as other sales under this part. The
101 agent or wholesale dealer may not collect from the tribal
102 business entity the cigarette excise tax imposed under s. 210.02
103 or the cigarette surcharge imposed under s. 210.011. The tribal
104 business entity is responsible to the agent or wholesale dealer
105 for the services and expenses incurred in affixing and
106 accounting for the stamps ~~Cigarettes sold to the Seminole Indian~~
107 ~~Tribe of Florida shall be administered as provided in s.~~
108 ~~210.1801.~~

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

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

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117 Section 4. Section 210.221, Florida Statutes, is created to
118 read:

119 210.221 Tax-exempt cigarettes sold on an Indian
120 reservation.-

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

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

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

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

130 (2) Notwithstanding any other law, a tribal business entity
131 may purchase stamped and untaxed cigarettes from agents or
132 wholesale dealers for retail sale in accordance with s.
133 210.05(5) and (6). A tribal business entity may sell or
134 distribute such tax-exempt cigarettes only to a tribal smoke
135 shop authorized to operate under s. 210.222. The maximum number
136 of tax-exempt cigarettes that may be purchased and sold annually
137 by a tribal business entity is calculated by multiplying the
138 number of members of the tribe times five packs of cigarettes
139 times 365.

140 (3) An authorized tribal smoke shop may:

141 (a) Purchase tax-exempt cigarettes from a tribal business
142 entity even though the cigarettes have an affixed cigarette tax-
143 and-surcharge stamp.

144 (b) Sell tax-exempt cigarettes on an Indian reservation
145 only.

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146 (c) Sell tax-exempt cigarettes at retail to members of an
147 Indian tribe recognized in this state and to the public.

148 (4) Each agent, wholesale dealer, or tribal business entity
149 that purchases or sells tax-exempt cigarettes shall keep records
150 of each such transaction and shall submit appropriate
151 documentation to the division. Documentation must contain the
152 identity of the parties involved in the transaction, the
153 identity and quantity of the product sold or purchased, and any
154 other information that the division may deem appropriate.

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

159 Section 5. Section 210.222, Florida Statutes, is created to
160 read:

161 210.222 Tribal smoke shop requirements.—

162 (1) A person may not own or operate a tribal smoke shop
163 without being issued a certificate of authority to operate by a
164 tribal business entity. A tribal business entity may charge a
165 tribal smoke shop owner or operator a reasonable fee for the
166 certificate of authority.

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

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

173 (b) Must provide for monitoring and enforcing the purchase
174 limit of three cartons within a 7-day period as specified in s.

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175 210.221(5). In order to monitor the three-carton limit,
176 authorized drive-through tribal smoke shops must, at a minimum:

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

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

182 3. Display a large sign inside the store which is clearly
183 legible and conspicuous to customers and which gives notice of
184 the three-carton limit and warns customers of the surveillance
185 cameras in use.

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

188 (3) Each tribal business entity shall adopt written
189 requirements establishing procedures for imposing fines against,
190 and for suspending and revoking the certificate of authority of,
191 a tribal smoke shop that violates or fails to adhere to the
192 requirements in s. 210.221 relating to the retail sale of tax-
193 exempt cigarettes adopted by the tribal business entity.

194 (4) Each tribal business entity that purchases stamped but
195 untaxed cigarettes from an agent or wholesaler pursuant to s.
196 210.05(5), must deposit all cigarette revenues into a fund
197 dedicated exclusively to funding tribal health care, including
198 the creation of a Tribal Comprehensive Tobacco Education and Use
199 Prevention Program modeled after the program created under s.
200 381.84.

201 (5) Any accounts established by a tribal business entity
202 which contain funds derived from tax-exempt cigarette sales,
203 including, but not limited to, an account established pursuant

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204 to subsection (4), and the use of such funds must be open to
205 inspection by the division.

206 Section 6. Paragraph (a) of subsection (4) of section
207 381.84, Florida Statutes, is amended to read:

208 381.84 Comprehensive Statewide Tobacco Education and Use
209 Prevention Program.—

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

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

214 1. The State Surgeon General, who shall serve as the
215 chairperson.

216 2. One county health department director, appointed by the
217 State Surgeon General.

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

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

222 5. The chief executive officer of the Greater Southeast
223 Affiliate of the American Heart Association, or his or her
224 designee.

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

227 7. The dean of the University of Miami School of Medicine,
228 or his or her designee.

229 8. The dean of the University of Florida College of
230 Medicine, or his or her designee.

231 9. The dean of the University of South Florida College of
232 Medicine, or his or her designee.

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- 233 10. The dean of the Florida State University College of
234 Medicine, or his or her designee.
- 235 11. The dean of Nova Southeastern College of Osteopathic
236 Medicine, or his or her designee.
- 237 12. The dean of the Lake Erie College of Osteopathic
238 Medicine in Bradenton, Florida, or his or her designee.
- 239 13. The chief executive officer of the Campaign for Tobacco
240 Free Kids, or his or her designee.
- 241 14. The chief executive officer of the Legacy Foundation,
242 or his or her designee.
- 243 15. Six ~~Four~~ members appointed by the Governor, of whom:
244 a. Two must have expertise in the field of tobacco-use
245 prevention and education or tobacco-use cessation;
246 b. Two must be members of the Seminole Indian Tribe of
247 Florida, of whom one must be a member of the Tribal
248 Comprehensive Tobacco Education and Use Prevention Program; and
249 c. One must ~~individual who shall~~ be between the ages of 16
250 and 21 at the time of his or her appointment.
- 251 16. Two members appointed by the President of the Senate,
252 of whom one must have expertise in the field of tobacco-use
253 prevention and education or tobacco-use cessation.
- 254 17. Two members appointed by the Speaker of the House of
255 Representatives, of whom one must have expertise in the field of
256 tobacco-use prevention and education or tobacco-use cessation.
- 257 Section 7. This act shall take effect July 1, 2014.