

By Senator Clemens

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1                   A bill to be entitled  
2       An act relating to cigarette surcharge and tax;  
3       amending ss. 210.011 and 210.02, F.S.; revising  
4       provisions relating to the surcharge and tax on the  
5       sale, receipt, purchase, possession, consumption,  
6       handling, distribution, and use of cigarettes;  
7       defining the term "standard package of cigarettes";  
8       amending s. 210.04, F.S.; deleting a provision that  
9       authorizes the Division of Alcoholic Beverages and  
10      Tobacco of the Department of Business and Professional  
11      Regulation to authorize manufacturers to distribute  
12      free sample packages of cigarettes; amending ss.  
13      210.06, 210.085, and 215.5602, F.S.; conforming  
14      provisions; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18       Section 1. Section 210.011, Florida Statutes, is amended to  
19      read:

20       210.011 Cigarette surcharge levied; collection.—

21       (1) A surcharge of \$2, in addition to all other taxes of  
22      every kind levied by law, is levied upon the sale, receipt,  
23      purchase, possession, consumption, handling, distribution, and  
24      use of cigarettes in this state, ~~in the following amounts,~~  
25      ~~except as otherwise provided in subsections (2)-(5),~~ for a  
26      standard package of cigarettes. For purposes of this section,  
27      the term "standard package of cigarettes" means a package of 20  
28      cigarettes, pursuant to 21 C.F.R. s. 1140.16(b) of standard  
29      ~~dimensions.~~

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30       ~~(a) Upon all cigarettes weighing not more than 3 pounds per~~  
31 ~~thousand, 5 cents on each cigarette.~~

32       ~~(b) Upon all cigarettes weighing more than 3 pounds per~~  
33 ~~thousand and not more than 6 inches long, 10 cents on each~~  
34 ~~cigarette.~~

35       ~~(c) Upon all cigarettes weighing more than 3 pounds per~~  
36 ~~thousand and more than 6 inches long, 20 cents on each~~  
37 ~~cigarette.~~

38       ~~(2) An additional surcharge of 4.2 cents is levied upon~~  
39 ~~each The descriptions of cigarettes contained in subsection (1)~~  
40 ~~are declared to be standard as to dimensions for the purpose of~~  
41 ~~levying a surcharge as provided in this section. If any~~  
42 ~~cigarette that is received, purchased, possessed, sold, offered~~  
43 ~~for sale, given away, or used in which is of a package size~~  
44 ~~other than a those standard package of cigarettes dimensions,~~  
45 ~~the cigarette is subject to a surcharge at the rate of 4.2 cents~~  
46 ~~on each cigarette.~~

47       ~~(3) When cigarettes as described in paragraph (1)(a) are~~  
48 ~~packed in varying quantities of 20 cigarettes or fewer, except~~  
49 ~~the manufacturer's free samples authorized under s. 210.04(9),~~  
50 ~~the following rates shall govern:~~

51       ~~(a) Packages containing 10 cigarettes or fewer require a~~  
52 ~~surcharge of 50 cents.~~

53       ~~(b) Packages containing more than 10 but not more than 20~~  
54 ~~cigarettes require a surcharge of \$1.~~

55       ~~(4) When cigarettes as described in paragraph (1)(b) are~~  
56 ~~packed in varying quantities of 20 cigarettes or fewer, except~~  
57 ~~the manufacturer's free samples authorized under s. 210.04(9),~~  
58 ~~the following rates shall govern:~~

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59 ~~(a) Packages containing 10 cigarettes or fewer require a~~  
60 ~~surcharge of \$1.~~

61 ~~(b) Packages containing more than 10 but not more than 20~~  
62 ~~cigarettes require a surcharge of \$2.~~

63 ~~(5) When cigarettes as described in paragraph (1) (c) are~~  
64 ~~packed in varying quantities of 20 cigarettes or fewer, except~~  
65 ~~the manufacturer's free samples authorized under s. 210.04(9),~~  
66 ~~the following rates shall govern:~~

67 ~~(a) Packages containing 10 cigarettes or fewer require a~~  
68 ~~surcharge of \$2.~~

69 ~~(b) Packages containing more than 10 but not more than 20~~  
70 ~~cigarettes require a surcharge of \$4.~~

71 (3)~~(6)~~ This surcharge shall be paid by the dealer to the  
72 division for deposit and distribution as hereinafter provided  
73 upon the first sale or transaction within the state, whether  
74 such sale or transfer is to the ultimate purchaser or consumer.  
75 The seller or dealer shall collect the surcharge from the  
76 purchaser or consumer, and the purchaser or consumer shall pay  
77 the surcharge to the seller. The seller or dealer is responsible  
78 for the collection of the surcharge and payment of the surcharge  
79 to the division. All surcharges are due not later than the 10th  
80 day of the month following the calendar month in which they were  
81 incurred, and thereafter shall bear interest at the rate of 1  
82 percent per month. If the amount of surcharge due for a given  
83 period is assessed without allocating it to any particular  
84 month, the interest begins accruing on the date of the  
85 assessment. Whenever cigarettes are shipped from outside the  
86 state to anyone other than a distributing agent or wholesale  
87 dealer, the person receiving the cigarettes is responsible for

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88 the surcharge on the cigarettes and payment of the surcharge to  
89 the division.

90 ~~(4)(7)~~ It is the legislative intent that the surcharge on  
91 cigarettes be uniform throughout the state.

92 ~~(5)(8)~~ The surcharge levied under this section shall be  
93 administered, collected, and enforced in the same manner as the  
94 tax imposed under s. 210.02.

95 ~~(6)(9)~~ Revenue produced from the surcharge levied under  
96 this section shall be deposited into the Health Care Trust Fund  
97 within the Agency for Health Care Administration.

98 Section 2. Section 210.02, Florida Statutes, is amended to  
99 read:

100 210.02 Cigarette tax imposed; collection.—

101 (1) An excise or privilege tax of 33.9 cents, in addition  
102 to all other taxes of every kind imposed by law, is imposed upon  
103 the sale, receipt, purchase, possession, consumption, handling,  
104 distribution, and use of cigarettes in this state, ~~in the~~  
105 ~~following amounts, except as hereinafter otherwise provided,~~ for  
106 a standard package of cigarettes. For purposes of this section,  
107 the term "standard package of cigarettes" means a package of 20  
108 cigarettes, pursuant to 21 C.F.R. s. 1140.16(b) of standard  
109 dimensions:

110 ~~(a) Upon all cigarettes weighing not more than 3 pounds per~~  
111 ~~thousand, 16.95 mills on each cigarette.~~

112 ~~(b) Upon all cigarettes weighing more than 3 pounds per~~  
113 ~~thousand and not more than 6 inches long, 33.9 mills on each~~  
114 ~~cigarette.~~

115 ~~(c) Upon all cigarettes weighing more than 3 pounds per~~  
116 ~~thousand and more than 6 inches long, 67.8 mills on each~~

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117 cigarette.

118       (2) An additional tax of 1.41 cents is imposed upon each  
119 ~~The description of cigarettes contained in paragraphs (a), (b),~~  
120 ~~and (c) of subsection (1) are hereby declared to be standard as~~  
121 ~~to dimensions for taxing purposes as provided in this law and~~  
122 ~~Should any cigarette that is~~ be received, purchased, possessed,  
123 sold, offered for sale, given away, or used in ~~of~~ a package size  
124 other than a ~~of~~ standard package of cigarettes ~~dimensions,~~ the  
125 same shall be taxed at the rate of 1.41 cents on each such  
126 cigarette.

127       ~~(3) When cigarettes as described in paragraph (1) (a) are~~  
128 ~~packed in varying quantities of 20 cigarettes or less, except~~  
129 ~~manufacturer's free samples authorized under s. 210.04(9), the~~  
130 ~~following rate shall govern:~~

131           ~~(a) Packages containing 10 cigarettes or less require a~~  
132 ~~16.95-cent tax.~~

133           ~~(b) packages containing more than 10 but not more than 20~~  
134 ~~cigarettes require a 33.9-cent tax.~~

135       ~~(4) When cigarettes as described in paragraph (1) (b) are~~  
136 ~~packed in varying quantities of 20 cigarettes or less, except~~  
137 ~~manufacturer's free samples authorized under s. 210.04(9), the~~  
138 ~~following rates shall govern:~~

139           ~~(a) Packages containing 10 cigarettes or less require a~~  
140 ~~33.9-cent tax.~~

141           ~~(b) Packages containing more than 10 but not more than 20~~  
142 ~~cigarettes require a 67.8-cent tax.~~

143       ~~(5) When cigarettes as described in paragraph (1) (c) are~~  
144 ~~packed in varying quantities of 20 cigarettes or less, except~~  
145 ~~manufacturer's free samples authorized under s. 210.04(9), the~~

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146 ~~following rates shall govern:~~

147 ~~(a) Packages containing 10 cigarettes or less require a~~  
148 ~~67.8-cent tax.~~

149 ~~(b) Packages containing more than 10 but not more than 20~~  
150 ~~cigarettes require a 135.6-cent tax.~~

151 (3)~~(6)~~ This tax shall be paid by the dealer to the division  
152 for deposit and distribution as hereinafter provided upon the  
153 first sale or transaction within the state, whether ~~or not~~ such  
154 sale or transfer is ~~be~~ to the ultimate purchaser or consumer.  
155 The seller or dealer shall collect the tax from the purchaser or  
156 consumer, and the purchaser or consumer shall pay the tax to the  
157 seller. The seller or dealer is ~~shall be~~ responsible for the  
158 collection of the tax and ~~the~~ payment of the tax ~~same~~ to the  
159 division. All taxes are due not later than the 10th day of the  
160 month following the calendar month in which they were incurred,  
161 and thereafter shall bear interest at the rate of 1 percent per  
162 month. If the amount of tax due for a given period is assessed  
163 without allocating it to any particular month, the interest  
164 begins accruing on ~~shall begin with~~ the date of the assessment.  
165 Whenever cigarettes are shipped from outside the state to anyone  
166 other than a distributing agent or wholesale dealer, the person  
167 receiving the cigarettes is ~~shall be~~ responsible for the tax on  
168 the ~~said~~ cigarettes and ~~the~~ payment of the tax ~~same~~ to the  
169 division.

170 (4)~~(7)~~ It is the legislative intent that the tax on  
171 cigarettes ~~shall~~ be uniform throughout the state.

172 Section 3. Subsection (9) of section 210.04, Florida  
173 Statutes, is amended to read:

174 210.04 Construction; exemptions; collection.—

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175 (9) Agents, located within or without the state, shall  
176 purchase stamps and affix such stamps in the manner prescribed  
177 to packages or containers of cigarettes to be sold, distributed,  
178 or given away within the state, in which case any dealer  
179 subsequently receiving such stamped packages of cigarettes will  
180 not be required to purchase and affix stamps on such packages of  
181 cigarettes. ~~However, the division may, in its discretion,~~  
182 ~~authorize manufacturers to distribute in the state free sample~~  
183 ~~packages of cigarettes containing not less than 2 or more than~~  
184 ~~20 cigarettes without affixing any surcharge and tax stamps~~  
185 ~~provided copies of shipping invoices on such cigarettes are~~  
186 ~~furnished, and payment of all surcharges and taxes imposed on~~  
187 ~~such cigarettes by law is made, directly to the division not~~  
188 ~~later than the 10th day of each calendar month. The surcharge~~  
189 ~~and tax on cigarettes in sample packages shall be based on a~~  
190 ~~unit in accordance with the surcharges levied under s.~~  
191 ~~210.011(1) and the taxing provisions of s. 210.02(1).~~

192 Section 4. Subsection (5) of section 210.06, Florida  
193 Statutes, is amended to read:

194 210.06 Affixation of stamps; presumption.—

195 (5) Except as provided in ~~s. 210.04(9) or~~ s. 210.09(1), no  
196 person, other than a dealer or distributing agent that receives  
197 unstamped cigarette packages directly from a cigarette  
198 manufacturer or importer in accordance with this section and s.  
199 210.085, shall hold or possess an unstamped cigarette package.  
200 Dealers shall be permitted to set aside, without application of  
201 stamps, only such part of the dealer's stock that is identified  
202 for sale or distribution outside this state. If a dealer  
203 maintains stocks of unstamped cigarette packages, such unstamped

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204 packages shall be stored separately from stamped product  
205 packages. No unstamped cigarette packages shall be transferred  
206 by a dealer to another facility of the dealer within this state  
207 or to another person within this state.

208 Section 5. Section 210.085, Florida Statutes, is amended to  
209 read:

210 210.085 Transactions only with permitted manufacturers,  
211 importers, distributing agents, dealers, and retail dealers.—  
212 ~~Except as otherwise provided in s. 210.04(9),~~ A manufacturer or  
213 importer, or a distributing agent representing a manufacturer or  
214 importer, may sell or distribute cigarettes to a person located  
215 or doing business within this state only if such person is a  
216 dealer or importer with a valid, current permit under s. 210.15.  
217 A distributing agent may accept cigarettes from a manufacturer  
218 or importer with a valid, current permit for transfer to a  
219 dealer with a valid, current permit but may not own or sell  
220 cigarettes. A dealer may sell or distribute cigarettes to a  
221 person located or doing business within this state only if such  
222 person is a dealer or retail dealer with a valid, current permit  
223 under s. 569.003. A dealer may obtain cigarettes only from a  
224 manufacturer or importer or from a distributing agent or dealer  
225 with a valid, current permit under s. 210.15. A retail dealer  
226 may obtain cigarettes only from a dealer with a valid, current  
227 permit under s. 210.15.

228 Section 6. Paragraph (a) of subsection (12) of section  
229 215.5602, Florida Statutes, is amended to read:

230 215.5602 James and Esther King Biomedical Research  
231 Program.—

232 (12) (a) Beginning in the 2011-2012 fiscal year and



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233 thereafter, \$25 million from the revenue deposited into the  
234 Health Care Trust Fund pursuant to ss. 210.011(6) ~~210.011(9)~~ and  
235 210.276(7) shall be reserved for research of tobacco-related or  
236 cancer-related illnesses. Of the revenue deposited in the Health  
237 Care Trust Fund pursuant to this section, \$25 million shall be  
238 transferred to the Biomedical Research Trust Fund within the  
239 Department of Health. Subject to annual appropriations in the  
240 General Appropriations Act, \$5 million shall be appropriated to  
241 the James and Esther King Biomedical Research Program, and \$5  
242 million shall be appropriated to the William G. "Bill" Bankhead,  
243 Jr., and David Coley Cancer Research Program created under s.  
244 381.922.

245 Section 7. This act shall take effect July 1, 2016.