

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL: SB 1394

INTRODUCER: Senator Simmons

SUBJECT: Taxes and Fees

DATE: February 2, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1394 amends the definition of the term “tobacco products” in s. 210.25, F.S., relating to the taxation and regulation of tobacco products other than cigarettes and cigars. The bill amends the definition of the term “tobacco products” to include nicotine dispensing devices and nicotine products as defined in s. 877.112(1)(a) and (b), F.S., respectively, which relate to the prohibition on the sale of such products to persons under 18 years of age.

By redefining the term “tobacco products,” nicotine dispensing devices and nicotine products are subject to the surcharge tax imposed under s. 210.276, F.S., and the tax imposed under s. 210.30, F.S. Additionally, distributors of nicotine dispensing devices and nicotine products are made subject to tax reporting and recordkeeping requirements.

The bill republishes ss. 210.276 and 210.30, F.S., relating to the 60 percent surcharge and tax on tobacco products.

The bill takes effect July 1, 2020.

II. Present Situation:

Tobacco Products

Part II of ch. 210, F.S., deals with the taxation and regulation of tobacco products other than cigarettes and cigars. Section 210.25(11), F.S., defines the term “tobacco products” to mean:

[L]oose tobacco suitable for smoking; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of

tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.

Under part II of ch. 210, F.S., distributors of tobacco products are subject license, reporting, and recordkeeping requirements.¹

Section 210.276, F.S., imposes a 60 percent surcharge on tobacco products other than cigars or cigarettes.

Section 210.30, F.S., imposes a 25 percent tax on the wholesale sales price of tobacco products.

Section 210.25(14), F.S., defines the term “wholesale sales price” to mean the sum of:

- (a) The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, the cost of labor and service, charges for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the distributor, exclusive of any diminution by volume or other discounts, including a discount provided to a distributor by an affiliate; and
- (b) The federal excise tax paid by the distributor on the tobacco products if the tax is not included in the full price under paragraph (a).

Nicotine Dispensing Devices

Section 877.112, F.S., provides requirements for the sale of nicotine dispensing devices and nicotine products to minors, such as electronic cigarettes (e-cigarettes). Section 877.112, F.S., prohibits the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age. It also prohibits persons under 18 years of age from possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices.

The term “nicotine dispensing device” is defined as:

[A]ny product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²

The term “nicotine product” is defined as:

[A]ny product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product

¹ See ss. 210.35, 210.55, 210.60, F.S., relating to license, reporting, and recordkeeping requirements, respectively, for distributors of tobacco products.

² Section 877.112(1)(a), F.S.

under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.³

III. Effect of Proposed Changes:

The bill amends the definition of the term “tobacco products” in s. 210.25, F.S., to include nicotine dispensing devices and nicotine products as defined in s. 877.112(1)(a) and (b), F.S., respectively. By redefining the term “tobacco products,” nicotine dispensing devices and nicotine products are subject to the surcharge tax imposed under s. 210.276, F.S., and the tax imposed under s. 210.30, F.S. Additionally, distributors of nicotine dispensing devices and nicotine products are made subject to tax reporting and recordkeeping requirements.

The bill republishes ss. 210.276 and 210.30, F.S., relating to the 60 percent surcharge and tax on tobacco products.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill amends the definition of the term “tobacco products” in s. 210.25, F.S., to include nicotine dispensing devices and nicotine products as defined in s. 877.112(1)(a) and (b), F.S., respectively. Under the bill, nicotine dispensing devices and nicotine products are subject to the surcharge tax imposed under s. 210.276, F.S., and the tax imposed under s. 210.30, F.S. Additionally, distributors of these products are made subject to the tax reporting and recordkeeping in requirements part II of ch. 210, F.S.

To the extent the bill imposes more than one tax on nicotine dispensing devices and nicotine products and requires distributors of nicotine dispensing devices and nicotine products to satisfy reporting and recordkeeping requirements, the bill may be unconstitutional as a violation of the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under Article VII, Section 19 of the Florida

³ Section 877.112(1)(b), F.S.

Constitution. Under this section, a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”⁴

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 210.25 of the Florida Statutes.

This bill republishes the following sections of the Florida Statutes: 210.276 and 210.30.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁴ FLA. CONST. art. VII, s. 19(d)(1)

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
