

1 amending s. 210.05, F.S.; providing stamp
2 requirements for cigarettes in transport;
3 providing stamp exceptions for certain
4 cigarettes; requiring transporters of certain
5 cigarettes to submit certain reports; amending
6 s. 210.06, F.S.; revising requirements for and
7 limitations on the affixation of stamps;
8 providing requirements with respect to receipt,
9 possession, storage, and transport of unstamped
10 cigarette packages; creating s. 210.085, F.S.;
11 requiring manufacturers, importers,
12 distributing agents, dealers, and retail
13 dealers to hold a current, valid permit to
14 sell, distribute, or receive cigarettes;
15 amending s. 210.09, F.S.; providing notice and
16 filing guidelines for certain persons shipping
17 unstamped cigarette packages; authorizing
18 certain law enforcement officials to inspect
19 certain shipping vehicles; amending s. 210.12,
20 F.S.; authorizing the state to claim certain
21 property and materials from certain dealers and
22 retailers who attempt to defraud the state;
23 authorizing the destruction of certain
24 cigarettes; amending s. 210.15, F.S.; providing
25 criteria for a permit application; prohibiting
26 issuance, maintenance, or renewal of certain
27 permits for certain applicants; providing
28 guidelines for denial of a permit application;
29 amending s. 210.18, F.S.; expanding the group
30 of violators subject to criminal liability;
31 prohibiting the sale or possession for sale of

1 counterfeit cigarettes; providing penalties;
2 creating s. 210.181, F.S.; providing civil
3 penalties for failure to comply with certain
4 duties or pay certain taxes; reenacting ss.
5 772.102(1)(a) and 895.02(1)(a), F.S., relating
6 to crimes constituting a "criminal activity"
7 and definitions as used in the Florida RICO
8 Act, to incorporate the amendment to s. 210.18,
9 F.S., in references thereto; providing an
10 appropriation and authorizing positions;
11 providing an appropriation to the Department of
12 Health; providing purposes; amending s. 17.41,
13 F.S.; providing an additional source of revenue
14 to the Tobacco Settlement Trust Fund; providing
15 an effective date.

16
17 WHEREAS, it is the intent of the Legislature to prevent
18 nonsettling manufacturers from undermining the state's policy
19 of reducing underage smoking by offering their cigarettes for
20 sale substantially below the price of cigarettes of other
21 manufacturers; to protect the tobacco settlement agreement and
22 funding, which is reduced as a result of the growth of
23 nonsettling-manufacturer cigarette sales, for programs funded
24 in whole or in part by payments to the state under the tobacco
25 settlement agreement and to recoup for the state
26 settlement-payment revenue lost to the state as a result of
27 nonsettling-manufacturer cigarette sales; to fund enforcement
28 and administration of nonsettling-manufacturer legislation and
29 the fee imposed in this act, including reasonable
30 administrative costs incurred by wholesale dealers complying
31 with any additional reporting requirements necessitated by

1 | this act; and to fund such other purposes as the Legislature
2 | determines, NOW, THEREFORE,

3 |
4 | Be It Enacted by the Legislature of the State of Florida:

5 |
6 | Section 1. Subsections (6) and (7) of section 210.01,
7 | Florida Statutes, are amended, and subsections (19) through
8 | (22) are added to that section, to read:

9 | 210.01 Definitions.--When used in this part the
10 | following words shall have the meaning herein indicated:

11 | (6) "Wholesale dealer" means any person located inside
12 | or outside this state who sells cigarettes to retail dealers
13 | or other persons for purposes of resale only, or any person
14 | who operates more than one cigarette vending machine located
15 | in more than one place of business. Such term does not include
16 | any cigarette manufacturer, export warehouse proprietor, or
17 | importer who holds a valid permit under 26 U.S.C. s. 5712 if
18 | such person sells or distributes cigarettes in this state only
19 | to dealers who are agents and who hold valid and current
20 | permits under s. 210.15 or to any cigarette manufacturer,
21 | export warehouse proprietor, or importer who holds a valid and
22 | current permit under 26 U.S.C. s. 5712.

23 | (7) "Retail dealer" means any person located inside or
24 | outside this state other than a wholesale dealer engaged in
25 | the business of selling cigarettes, including persons licensed
26 | pursuant to s. 569.003.

27 | (19) "Stamp" or "stamps" means the indicia required to
28 | be placed on cigarette packages which evidences payment of the
29 | tax on cigarettes under s. 210.02.

30 | (20) "Importer" means any person holding a valid
31 | permit under 26 U.S.C. s. 5712 who imports into the United

1 States, directly or indirectly, a finished cigarette for sale
2 or distribution.

3 (21) "Counterfeit cigarettes" means cigarettes that
4 have false manufacturing labels, tobacco product packs with
5 counterfeit tax stamps, or any combination thereof.

6 (22) "Brand family" means all styles of cigarettes
7 sold under the same trademark and differentiated from one
8 another by means of additional modifiers or descriptors,
9 including, but not limited to, "menthol," "lights," "kings,"
10 and "100s," and includes any brand name used alone or in
11 conjunction with any other word, trademark, logo, symbol,
12 motto, selling message, recognizable pattern of colors, or any
13 other indicia of product identification identical or similar
14 to, or identifiable with, a previously known brand of
15 cigarettes.

16 Section 2. Section 210.0205, Florida Statutes, is
17 created to read:

18 210.0205 Nonsettling-manufacturer fee.--

19 (1) As used in this section, the term:

20 (a) "Consumer Price Index" means the Consumer Price
21 Index for All Urban Consumers as published by the Bureau of
22 Labor Statistics of the United States Department of Labor.

23 (b) "Manufacturer" means a person or entity holding a
24 valid permit under 26 U.S.C. s. 5712 that manufactures,
25 fabricates, or assembles cigarettes. The term includes an
26 entity that is the first importer into the United States of
27 cigarettes manufactured abroad.

28 (c) "Nonsettling manufacturer" means any tobacco
29 product manufacturer that has not entered into the tobacco
30 settlement agreement defined in s. 215.56005(1)(f), or the
31 Attorneys General Settlement Agreement dated March 15, 1996,

1 in the State of Florida, et al. v. American Tobacco Company,
2 et al., Fifteenth Judicial Circuit, Case No. 95-1466.

3 (d) "Nonsettling-manufacturer cigarettes" means
4 cigarettes manufactured by a nonsettling manufacturer, except
5 when payments on such cigarettes are due to be made by a
6 settling manufacturer pursuant to a tobacco settlement
7 agreement described in paragraph (c).

8 (2) A fee, in addition to all other taxes or fees of
9 every kind imposed by law, is imposed upon the sale, receipt,
10 purchase, possession, consumption, handling, distribution, and
11 use in this state of nonsettling-manufacturer cigarettes to the
12 package of which an agent affixes a stamp or stamp insignia as
13 required by law or which are sold or purchased in the state
14 but are not required to bear a stamp or stamp insignia of this
15 state. The fee is in the amount of 20 mills per cigarette in
16 fiscal year 2005-2006. Beginning January 1, 2007, and on
17 January 1 of each year thereafter, the division shall adjust
18 the tax rate by the greater of 3 percent or the percentage
19 change in the average of the Consumer Price Index issued by
20 the United States Department of Labor for the most recent
21 12-month period ending September 30 compared to the 12-month
22 period ending September 30 of the prior year.

23 (3) The division shall collect the fee once each month
24 from each nonsettling manufacturer based on information
25 received pursuant to subsection (6). The division shall mail
26 to each nonsettling manufacturer not later than the 15th day
27 of each month a notice of the fee due from that manufacturer
28 for sales of its cigarettes made in the preceding month. Each
29 such nonsettling manufacturer shall ensure that the division
30 has received payment of the fee in full no later than the last
31 day of the month in which the notice was mailed. Except as

1 otherwise provided in this section, proceeds from the fee
2 shall be deposited into the Tobacco Settlement Clearing Trust
3 Fund and the fee shall be imposed, collected, paid,
4 administered, and enforced in the same manner as the tax on
5 cigarettes imposed by s. 210.02.

6 (4) A nonsettling manufacturer selling cigarettes in
7 this state on July 1, 2005, shall provide to the division the
8 information described in subsections (7) and (8) and pay the
9 fee imposed by subsection (2), by August 1, 2005. If a
10 nonsettling manufacturer is not selling cigarettes in this
11 state on July 1, 2005, before commencing sales of cigarettes
12 in this state, the nonsettling manufacturer shall prepay the
13 fee imposed by subsection (2). The prepayment amount shall be
14 a sum determined by multiplying by 20 mills in fiscal year
15 2005-2006 the number of cigarettes the division reasonably
16 projects that the nonsettling manufacturer will sell in this
17 state in the first calendar month or \$50,000, whichever is
18 more. The division may require a nonsettling manufacturer to
19 provide any information reasonably necessary to determine the
20 amount of the prepayment fee and, in the case of prepayment,
21 shall establish procedures for providing reimbursement to
22 nonsettling manufacturers if actual sales are less than sales
23 projected by the division and for additional payment by
24 nonsettling manufacturers if actual sales are greater than
25 sales projected by the division. As used in this subsection,
26 the term "cigarettes" refers only to nonsettling-manufacturer
27 cigarettes.

28 (5) The purposes of the fee are to:

29 (a) Prevent nonsettling manufacturers from undermining
30 the state's policy of reducing underage smoking by offering
31

1 cigarettes for sale substantially below the price of
2 cigarettes of other manufacturers.

3 (b)1. Protect the tobacco settlement agreement, as
4 defined in s. 215.56005(1)(f), and funding, which is reduced
5 as a result of the growth of nonsettling-manufacturer
6 cigarette sales, for programs funded in whole or in part by
7 payments to the state under the tobacco settlement agreement;
8 and

9 2. Recoup for the state settlement-payment revenue
10 lost to the state as a result of nonsettling-manufacturer
11 cigarette sales.

12 (c) Fund enforcement and administration of
13 nonsettling-manufacturer legislation and the fee imposed by
14 this section, including reasonable administrative costs
15 incurred by wholesale dealers complying with any additional
16 reporting requirements necessitated by this section.

17 (d) Fund such other purposes as the Legislature
18 determines; however, \$16 million of the proceeds received
19 under this section shall be provided annually through
20 quarterly disbursements to the Department of Health, for the
21 purposes of implementing a statewide anti-smoking marketing,
22 educational, and advertising campaign to reduce youth tobacco
23 use. The Department of Health shall conduct surveillance and
24 evaluations to measure program performance and improve
25 implementation strategies. The Department of Health may
26 contract for any of the activities specified in this section.

27 (6) Monthly reports shall be made to the division
28 pursuant to s. 210.09(2) by each agent and wholesaler. Such
29 reports must state the number and denominations of stamps or
30 stamp insignia affixed to individual packages of
31 nonsettling-manufacturer cigarettes and the number of

1 individual packages of nonsettling-manufacturer cigarettes
2 otherwise sold or purchased in this state or otherwise handled
3 or distributed in this state for sale in another state,
4 commonwealth, or territory of the United States, by
5 manufacturer and brand family, sold for each place of business
6 in the month preceding the month in which the report is made.
7 The division may adopt rules requiring any agent, wholesaler,
8 wholesale dealer, or nonsettling manufacturer to provide in
9 the monthly report any information necessary or appropriate to
10 determining the fee due under subsection (2) or to enforcing
11 this section.

12 (7) Before commencing sales of cigarettes in this
13 state or, if selling cigarettes in this state on July 1, 2005,
14 by August 1, 2005, a nonsettling manufacturer shall provide to
15 the division, on a form prescribed by the division:

16 (a) The complete name, address, and telephone number
17 of the nonsettling manufacturer.

18 (b) The date the nonsettling manufacturer began or
19 intends to begin selling cigarettes in this state.

20 (c) The names of the brand families of the cigarettes
21 the nonsettling manufacturer is selling or will sell in this
22 state.

23 (d) A statement of the nonsettling manufacturer's
24 intention to comply with the obligations imposed by this
25 section.

26 (e) The name, address, telephone number, and signature
27 of an officer of the nonsettling manufacturer attesting to all
28 of the information described in this subsection.

29 (8) Each nonsettling manufacturer subject to the fee
30 imposed by subsection (2) shall certify to the division on the
31 first day of each month that the manufacturer is in compliance

1 with this section and has paid in full the fee imposed by
2 subsection (2). The division shall develop, maintain, and
3 publish on its Internet website a directory listing all
4 nonsettling manufacturers that have provided current,
5 accurate, and complete certifications. The division shall
6 provide a copy of the list to any person upon request.

7 (9) Cigarettes of a nonsettling manufacturer that has
8 not paid a fee imposed by subsection (2), or that has not
9 complied with the reporting requirements of subsections (4),
10 (6), (7), and (8), shall be treated as cigarettes for which
11 the tax imposed by s. 210.02 has not been paid. A person may
12 not affix to any package of nonsettling-manufacturer
13 cigarettes the stamp required under s. 210.06, or otherwise
14 purchase or sell such cigarettes, after such person receives
15 notice from the division that the nonsettling manufacturer of
16 such cigarettes has not paid in full the fee imposed by
17 subsection (2) or if the nonsettling manufacturer is not
18 listed on the division's directory described in subsection
19 (8).

20 (10) The fee imposed by this section does not apply to
21 a subsequent participating manufacturer, as defined in the
22 master settlement agreement, until the effective date of a
23 credit amendment to the master settlement agreement. For
24 purposes of this subsection and s. 210.05(6)(c), the term
25 "master settlement agreement" means the settlement agreement
26 and related documents entered into in 1998 by 46 states and
27 leading United States tobacco manufacturers. An amendment to
28 the master settlement agreement shall be considered a credit
29 amendment if it makes available to each subsequent
30 participating manufacturer, other than any subsequent
31 participating manufacturer that has an agreement as of July 1,

1 2005, as described in the final sentence of this subsection,
2 each year a credit against its payment obligations under the
3 master settlement agreement which is equal to or greater than
4 the product of the total number of individual cigarettes sold
5 by a subsequent participating manufacturer in this state
6 during the year in question multiplied by at least 73.2
7 percent of the per-cigarette fee provided for in this section,
8 and does not condition that credit on such subsequent
9 participating manufacturer forfeiting in whole or in part any
10 other benefits or credits provided for in the master
11 settlement agreement. This subsection does not apply to any
12 subsequent participating manufacturer that, as of July 1,
13 2005, already had an agreement with the settling states, as
14 defined in the master settlement agreement, pursuant to which
15 agreement the subsequent participating manufacturer has agreed
16 to a different credit against its payment obligations under
17 the master settlement agreement based on its cigarette sales
18 in this state.

19 Section 3. Subsection (6) is added to section 210.05,
20 Florida Statutes, to read:

21 210.05 Preparation and sale of stamps; discount.--

22 (6)(a) A person may not transport or cause to be
23 transported from this state cigarettes for sale in another
24 state without first affixing to the cigarettes the stamp
25 required by the state in which the cigarettes are to be sold
26 or paying any other excise tax on the cigarettes imposed by
27 the state in which the cigarettes are to be sold.

28 (b) A person may not affix to cigarettes the stamp
29 required by another state or pay any other excise tax on the
30 cigarettes imposed by another state if the other state
31 prohibits stamps from being affixed to the cigarettes,

1 prohibits the payment of any other excise tax on the
2 cigarettes, or prohibits the sale of the cigarettes.

3 (c) The requirements of paragraphs (a) and (b) do not
4 apply to cigarettes with respect to which the manufacturer or
5 importer is either a participating manufacturer, as defined in
6 section II(jj) of the master settlement agreement, or is in
7 full compliance with the qualifying statute, as defined in
8 section IX(d)(2)(E) of the master settlement agreement, of the
9 state in which the cigarettes are to be sold. An exemption
10 pursuant to this paragraph may only be asserted with respect
11 to cigarettes that, in the case of a participating
12 manufacturer, are deemed to be its cigarettes for purposes of
13 calculating its payments under the master settlement agreement
14 for the relevant year in the volumes and shares determined
15 pursuant to the master settlement agreement, and, in the case
16 of all other manufacturers and importers, are deemed to be its
17 cigarettes for purposes of the applicable qualifying statute.
18 For purposes of this subsection the term "master settlement
19 agreement" means the settlement agreement and related
20 documents entered into in 1998 by 46 states and leading United
21 States tobacco manufacturers. A person asserting an exemption
22 pursuant to this paragraph shall submit the reports required
23 by paragraph (d) and shall certify as provided in that
24 paragraph.

25 (d) On or before the 10th day of each month, a person
26 who transports or causes to be transported from this state
27 cigarettes for sale in another state shall submit to the
28 division a report identifying the quantity and brand family of
29 each brand of the cigarettes transported or caused to be
30 transported in the preceding calendar month and the name and
31 address of each recipient of the cigarettes. Such person shall

1 also certify under oath and subject to the penalties of
2 perjury that:

3 1. The stamps required by paragraph (a) have been
4 affixed in accordance with that paragraph or that such stamps
5 were not affixed pursuant to paragraph (b); or

6 2. Such person satisfies the requirements of paragraph
7 (c).

8 (e) For purposes of this section, the term "person"
9 means an individual, partnership, committee, association,
10 corporation, or any other organization or group of persons.
11 Person does not include any common or contract carrier, or
12 public warehouse that is not owned, in whole or in part,
13 directly or indirectly, by the person transporting the
14 cigarettes or causing the transport to be made.

15 (f) This subsection does not authorize the possession
16 or transportation of cigarettes by any person not so
17 authorized by another provision of this part.

18 Section 4. Subsection (1) of section 210.06, Florida
19 Statutes, is amended, and subsection (5) is added to that
20 section, to read:

21 210.06 Affixation of stamps; presumption.--

22 (1) Every dealer within ~~or without~~ the state shall
23 affix or cause to be affixed to such package or container of
24 such cigarettes ~~such~~, stamps as are required under this
25 section within 10 days after receipt of such products. Dealers
26 outside this state shall affix such stamps before the shipment
27 of cigarettes into this state, evidencing the payment of the
28 ~~tax imposed by virtue of this part before such cigarettes are~~
29 ~~offered for sale or use or consumed or before they are~~
30 ~~otherwise disposed of in the state.~~

31

1 (a) A tax stamp shall be applied to all cigarette
2 packages intended for sale or distribution to consumers
3 subject to the tax imposed under s. 210.02, except as
4 otherwise provided in this act.

5 (b) A stamp may not be applied to any cigarette
6 package exempt from tax under 26 U.S.C. s. 5704 which is
7 distributed by a manufacturer pursuant to federal regulations.

8 (c) Dealers may apply stamps only to cigarette
9 packages received directly from a manufacturer or importer of
10 cigarettes who possesses a valid and current permit under 26
11 U.S.C. s. 5712.

12 (5) Except as provided in s. 210.09(1), a person,
13 other than a dealer that receives unstamped cigarette packages
14 directly from a cigarette manufacturer or importer in
15 accordance with this section and s. 210.085, may not hold or
16 possess an unstamped cigarette package. Dealers may set aside,
17 without application of stamps, only such part of the dealer's
18 stock which is identified for sale or distribution outside
19 this state. If a dealer maintains stocks of unstamped
20 cigarette packages, such unstamped packages shall be stored
21 separately from stamped product packages. Unstamped cigarette
22 packages may not be transferred by a dealer to another
23 facility of the dealer within this state or to another person
24 within this state.

25 Section 5. Section 210.085, Florida Statutes, is
26 created to read:

27 210.085 Transactions only with permitted
28 manufacturers, importers, distributing agents, dealers, and
29 retail dealers.--A manufacturer, importer, or distributing
30 agent may sell or distribute cigarettes to a person located or
31 doing business within this state only if such person is a

1 dealer holding a valid, current permit under s. 210.15. A
2 dealer may sell or distribute cigarettes to a person located
3 or doing business within this state only if such person is a
4 dealer or retail dealer holding a valid, current permit under
5 s. 569.003. A dealer may obtain cigarettes only from a
6 manufacturer or importer who possesses a valid, current permit
7 under 26 U.S.C. s. 5712 or from a distributing agent or dealer
8 holding a valid, current permit under s. 210.15. A retail
9 dealer may obtain cigarettes only from a manufacturer,
10 importer, or dealer holding a valid, current permit under s.
11 210.15.

12 Section 6. Subsection (1) of section 210.09, Florida
13 Statutes, is amended to read:

14 210.09 Records to be kept; reports to be made;
15 examination.--

16 (1)(a) Every person who shall possess or transport any
17 unstamped cigarettes upon the public highways, roads, or
18 streets of the state, shall be required to have in his or her
19 actual possession invoices or delivery tickets for such
20 cigarettes. The absence of such invoices or delivery tickets
21 shall be prima facie evidence that such person is a dealer in
22 cigarettes in this state and subject to the provisions of this
23 part.

24 (b) Any person who ships unstamped cigarette packages
25 into this state other than to a manufacturer, importer, or
26 dealer holding a valid, current permit pursuant to s. 210.15
27 shall first file with the division a notice of such shipment.
28 This paragraph does not apply to any common or contract
29 carrier that is transporting cigarettes through this state to
30 another location outside this state under a proper bill of
31

1 loading or freight bill that states the quantity, source, and
2 destination of such cigarettes.

3 (c) In any case in which the division or its duly
4 authorized agent, or any law enforcement officer of this
5 state, has knowledge or reasonable grounds to believe that any
6 vehicle is transporting cigarettes in violation of this part,
7 the division, such agent, or such law enforcement officer is
8 authorized to stop such vehicle and inspect the vehicle for
9 contraband cigarettes.

10 Section 7. Subsection (1) of section 210.12, Florida
11 Statutes, is amended, subsections (2) through (6) of that
12 section are renumbered as subsections (4) through (8),
13 respectively, and new subsections (2) and (3) are added to
14 that section, to read:

15 210.12 Seizures; forfeiture proceedings.--

16 (1) The state, acting by and through the division,
17 shall be authorized and empowered to seize, confiscate, and
18 ~~forfeit for the use and benefit of the state,~~ any cigarettes
19 upon which taxes payable hereunder may be unpaid or which are
20 otherwise held in violation of the requirements of this
21 chapter, and also any vending machine or receptacle in which
22 ~~such~~ cigarettes upon which taxes have not been paid are held
23 for sale, or any vending machine that does not have affixed
24 thereto the identification sticker required by the provisions
25 of s. 210.07, or which does not display at all times at least
26 one package of each brand of cigarettes located therein so the
27 same is clearly visible and arranged in such a manner that the
28 cigarette tax stamp or meter impression of the stamp affixed
29 thereto is clearly visible. Such seizure may be made by the
30 division, its duly authorized representative, any sheriff or
31 deputy sheriff, or any police officer.

1 (2) All fixtures, equipment, and other materials and
2 personal property on the premises of any dealer or retail
3 dealer who, with intent to defraud the state, fails to keep or
4 make any record, return, report, or inventory required by this
5 part; keeps or makes any false or fraudulent record, return,
6 report, or inventory required by this part; refuses to pay any
7 tax imposed by this part; or attempts in any manner to evade
8 or defeat the requirements of this part shall be forfeited to
9 the state.

10 (3) All cigarettes seized, confiscated, and forfeited
11 to the state under this part shall be destroyed.

12 Section 8. Subsection (1) of section 210.15, Florida
13 Statutes, is amended to read:

14 210.15 Permits.--

15 (1)(a) Every person, firm, or corporation desiring to
16 engage in business as a manufacturer, importer, exporter,
17 distributing agent, or wholesale dealer of cigarettes deal in
18 ~~cigarettes as a distributing agent, wholesale dealer, or~~
19 ~~exporter~~ within this state shall file with the division an
20 application for a cigarette permit for each place of business
21 located within this state or, in the absence of such place of
22 business in this state, for wherever its principal place of
23 business is located with the Division of Alcoholic Beverages
24 ~~and Tobacco~~. Every application for a cigarette permit shall be
25 made on forms furnished by the division and shall set forth
26 the name under which the applicant transacts or intends to
27 transact business, the location of the applicant's place of
28 business within the state, if any, and such other information
29 as the division may require. If the applicant has or intends
30 to have more than one place of business dealing in cigarettes
31 within this state, the application shall state the location of

1 each place of business. If the applicant is an association,
2 the application shall set forth the names and addresses of the
3 persons constituting the association, and if a corporation,
4 the names and addresses of the principal officers thereof and
5 any other information prescribed by the division for the
6 purpose of identification. The application shall be signed and
7 verified by oath or affirmation by the owner, if a natural
8 person, and in the case of an association or partnership,
9 members or partners thereof, and in the case of a corporation,
10 by an executive officer thereof or by any person specifically
11 authorized by the corporation to sign the application, to
12 which shall be attached the written evidence of this
13 authority. The cigarette permit for a distributing agent shall
14 be issued annually for which an annual fee of \$5 shall be
15 charged.

16 (b) The holder of any duly issued, annual permit for a
17 distributing agent shall be entitled to a renewal of his or
18 her annual permit from year to year as a matter of course, on
19 or before July 1, upon making application to the division and
20 upon payment of this annual permit fee.

21 (c) Permits ~~The permit for a distributing agent,~~
22 ~~wholesale dealer, or exporter~~ shall be issued only to persons
23 of good moral character, who are not less than 18 years of
24 age. ~~Distributing agent, wholesale dealer, or exporter~~ Permits
25 to corporations shall be issued only to corporations whose
26 officers are of good moral character and not less than 18
27 years of age. There shall be no exemptions from the permit
28 fees herein provided to any persons, association of persons,
29 or corporation, any law to the contrary notwithstanding.

30 (d) No ~~distributing agent, wholesale dealer, or~~
31 ~~exporter~~ permit shall be issued, maintained, or renewed if the

1 applicant, its officers, or any person or persons owning
2 directly or indirectly, in the aggregate, more than 10 percent
3 of the ownership interests in the applicant:

4 1. Owes \$500 or more in delinquent cigarette taxes;

5 2. Had a cigarette importer, retail dealer, or dealer
6 permit revoked by the division within the previous 2 years;

7 3. Has been convicted of selling stolen or counterfeit
8 cigarettes, receiving stolen cigarettes, or being involved in
9 the counterfeiting of cigarettes; or

10 4. Has ~~to any person who has~~ been convicted within the
11 past 5 years of any offense against the cigarette laws of this
12 state or ~~who~~ has been convicted in this state, any other
13 state, or the United States during the past 5 years of any
14 offense designated as a felony by such state or the United
15 States, or to a corporation, any of whose officers have been
16 so convicted. The term "convicted" ~~"conviction"~~ shall include
17 an adjudication of guilt on a plea of guilty or a plea of nolo
18 contendere, or the forfeiture of a bond when charged with a
19 crime.

20 ~~(e)(d)~~ The division may refuse to issue a ~~distributing~~
21 ~~agent, wholesale, or exporter~~ permit to any person, firm, or
22 corporation whose permit under the cigarette law has been
23 revoked or to any corporation, an officer of which has had his
24 or her permit under the cigarette law revoked, or to any
25 person who is or has been an officer of a corporation whose
26 permit has been revoked under the cigarette law. Any permit
27 issued to a firm or corporation prohibited from obtaining such
28 permit under the cigarette law may be revoked by the division.

29 ~~(f)(e)~~ Prior to an application for a distributing
30 agent, wholesale dealer, or exporter permit being approved,
31 the applicant shall file a set of fingerprints on forms

1 provided by the division. The applicant shall also file a set
2 of fingerprints for any person or persons interested directly
3 or indirectly with the applicant in the business for which the
4 permit is being sought, when so required by the division. If
5 the applicant or any person interested with the applicant,
6 either directly or indirectly, in the business for which the
7 permit is sought shall be such a person as is within the
8 definition of persons to whom a ~~distributing agent, wholesale~~
9 ~~dealer, or exporter~~ permit shall be denied, then the
10 application may be denied by the division. If the applicant is
11 a partnership, all members of the partnership are required to
12 file said fingerprints, or if a corporation, all principal
13 officers of the corporation are required to file said
14 fingerprints. The cigarette permit for a wholesale dealer or
15 exporter shall be originally issued at a fee of \$100, which
16 sum is to cover the cost of the investigation required before
17 issuing such permit.

18 ~~(g)(f)~~ The cigarette permits issued under this section
19 ~~permit for a wholesale dealer or exporter~~ shall be renewed
20 from year to year ~~as a matter of course~~, at an annual cost of
21 \$100, on or before July 1, upon making application to the
22 division and upon payment of the annual renewal fee.

23 ~~(h)(g)~~ Permittees, by acceptance of their permits,
24 agree that their places of business or vehicles transporting
25 cigarettes shall always be subject to be inspected and
26 searched without a search warrant for the purpose of
27 ascertaining that all provisions of this part are complied
28 with by authorized employees of the division and also by
29 sheriffs, deputy sheriffs, and police officers during business
30 hours or during any other time such premises are occupied by
31 the permittee or other persons. Retail cigarette dealers and

1 manufacturers' representatives, by dealing in cigarettes,
2 agree that their places of business or vehicles transporting
3 cigarettes shall always be subject to inspection and search
4 without a search warrant for the purpose of ascertaining that
5 all provisions of this part are complied with by authorized
6 employees of the division and also by sheriffs, deputy
7 sheriffs, and police officers during business hours or other
8 times when the premises are occupied by the retail dealer or
9 manufacturers' representatives or other persons.

10 ~~(i)(h)~~ No retail sales of cigarettes may be made at a
11 location for which a wholesale dealer, distributing agent, or
12 exporter permit has been issued. The excise tax on sales made
13 to any traveling location, such as an itinerant store or
14 industrial caterer, shall be paid into the General Revenue
15 Fund unallocated. Cigarettes may be purchased for retail
16 purposes only from a person holding a wholesale dealer permit.
17 The invoice for the purchase of cigarettes must show the place
18 of business for which the purchase is made and the cigarettes
19 cannot be transferred to any other place of business for the
20 purpose of resale.

21 Section 9. Subsections (2), (3), and (6) of section
22 210.18, Florida Statutes, are amended, and subsection (9) is
23 added to that section, to read:

24 210.18 Penalties for tax evasion; reports by
25 sheriffs.--

26 (2) Except as otherwise provided in this section, any
27 person ~~wholesale or retail dealer~~ who fails, neglects, or
28 refuses to comply with, or violates the provisions of, this
29 part or the rules adopted ~~and regulations promulgated~~ by the
30 division under this part commits ~~is guilty of~~ a misdemeanor of
31 the first degree, punishable as provided in s. 775.082 or s.

1 775.083. Any person ~~wholesale or retail dealer~~ who has been
2 convicted of a violation of any provision of the cigarette tax
3 law and who is thereafter convicted of a further violation of
4 the cigarette tax law is, upon conviction of such further
5 offense, guilty of a felony of the third degree, punishable as
6 provided in s. 775.082, s. 775.083, or s. 775.084.

7 (3) Any person who falsely or fraudulently makes,
8 forges, alters, or counterfeits any stamp or impression die
9 used in meter machines prescribed by the division under the
10 provisions of this part; or, with intent to evade taxes, jams,
11 tampers with, or alters such a machine; or causes or procures
12 to be falsely or fraudulently made, forged, altered, or
13 counterfeited any such stamp or die; or knowingly and
14 willfully utters, purchases, passes or tenders as true any
15 such false, altered, or counterfeited stamp or die impression;
16 or with the intent to defraud the state, fails to comply with
17 any other requirement of this chapter commits is guilty of a
18 felony of the third degree, punishable as provided in s.
19 775.082, s. 775.083, or s. 775.084.

20 (6)(a) ~~Every person, firm, or corporation, other than~~
21 ~~a licensee under the provisions of this part, who possesses,~~
22 ~~removes, deposits, or conceals, or aids in the possessing,~~
23 ~~removing, depositing, or concealing of, any unstamped~~
24 ~~cigarettes not in excess of 50 cartons is guilty of a~~
25 ~~misdemeanor of the second degree, punishable as provided in s.~~
26 ~~775.082 or s. 775.083. In lieu of the penalties provided in~~
27 ~~those sections, however, the person, firm, or corporation may~~
28 ~~pay the tax plus a penalty equal to the amount of the tax~~
29 ~~authorized under s. 210.02 on the unstamped cigarettes.~~

30 (a)(b) Every person, firm, or corporation, other than
31 a licensee under the provisions of this part, who possesses,

1 removes, deposits, or conceals, or aids in the possessing,
2 removing, depositing, or concealing of, any unstamped
3 cigarettes in excess of 50 cartons is presumed to have
4 knowledge that they have not been taxed and commits is guilty
5 ~~of~~ a felony of the third degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084.

7 ~~(b)(c)~~ This section does not apply to a person
8 possessing not in excess of three cartons of such cigarettes
9 purchased by such possessor outside the state in accordance
10 with the laws of the place where purchased and brought into
11 this state by such possessor. The burden of proof that such
12 cigarettes were purchased outside the state and in accordance
13 with the laws of the place where purchased shall in all cases
14 be upon the possessor of such cigarettes.

15 (9) Notwithstanding any other provision of law, the
16 sale or possession for sale of counterfeit cigarettes by any
17 person or by a manufacturer, importer, distributing agent,
18 wholesale dealer, or retail dealer shall result in the seizure
19 of the product and related machinery by the division or any
20 law enforcement agency and shall be punishable as follows:

21 (a)1. A first violation with a total quantity of less
22 than two cartons of cigarettes or the equivalent amount of
23 other cigarettes shall be punishable by a fine not to exceed
24 \$1,000 or five times the retail value of the cigarettes
25 involved, whichever is greater, or imprisonment not to exceed
26 5 years, or both.

27 2. A subsequent violation with a total quantity of
28 less than two cartons of cigarettes or the equivalent amount
29 of other cigarettes shall be punishable by a fine not to
30 exceed \$5,000 or five times the retail value of the cigarettes
31 involved, whichever is greater, or imprisonment not to exceed

1 5 years, or both, and shall also result in the revocation by
2 the division of the permit of the manufacturer, importer,
3 distributing agent, wholesale dealer, or retail dealer.

4 (b)1. A first violation with a total quantity of two
5 or more cartons of cigarettes or the equivalent amount of
6 other cigarettes shall be punishable by a fine not to exceed
7 \$2,000 or five times the retail value of the cigarettes
8 involved, whichever is greater, or imprisonment not to exceed
9 5 years, or both.

10 2. A subsequent violation with a quantity of two
11 cartons of cigarettes or more or the equivalent amount of
12 other cigarettes shall be punishable by a fine not to exceed
13 \$50,000 or five times the retail value of the cigarettes
14 involved, whichever is greater, or imprisonment not to exceed
15 5 years, or both, and shall also result in the revocation by
16 the division of the permit of the manufacturer, importer,
17 distributing agent, wholesale dealer, or retail dealer.

18
19 For purposes of this subsection, any counterfeit cigarettes
20 seized by the division shall be destroyed.

21 Section 10. Section 210.181, Florida Statutes, is
22 created to read:

23 210.181 Civil penalties.--

24 (1) Whoever knowingly omits, neglects, or refuses to
25 comply with any duty imposed upon him or her by this part, or
26 to do or cause to be done any of the things required by this
27 part, or does anything prohibited by this part shall, in
28 addition to any other penalty provided in this part, be liable
29 for a fine of \$1,000 or five times the retail value of the
30 cigarettes involved, whichever is greater.

31

1 (2) Whoever fails to pay any tax imposed by this part
2 at the time prescribed by law or rules shall, in addition to
3 any other penalty provided in this part, be liable for a
4 penalty of five times the unpaid tax due.

5 Section 11. For the purpose of incorporating the
6 amendment made by this act to section 210.18, Florida
7 Statutes, in a reference thereto, paragraph (a) of subsection
8 (1) of section 772.102, Florida Statutes, is reenacted to
9 read:

10 772.102 Definitions.--As used in this chapter, the
11 term:

12 (1) "Criminal activity" means to commit, to attempt to
13 commit, to conspire to commit, or to solicit, coerce, or
14 intimidate another person to commit:

15 (a) Any crime which is chargeable by indictment or
16 information under the following provisions:

17 1. Section 210.18, relating to evasion of payment of
18 cigarette taxes.

19 2. Section 414.39, relating to public assistance
20 fraud.

21 3. Section 440.105 or s. 440.106, relating to workers'
22 compensation.

23 4. Part IV of chapter 501, relating to telemarketing.

24 5. Chapter 517, relating to securities transactions.

25 6. Section 550.235, s. 550.3551, or s. 550.3605,
26 relating to dogracing and horseracing.

27 7. Chapter 550, relating to jai alai frontons.

28 8. Chapter 552, relating to the manufacture,
29 distribution, and use of explosives.

30 9. Chapter 562, relating to beverage law enforcement.

31

- 1 10. Section 624.401, relating to transacting insurance
2 without a certificate of authority, s. 624.437(4)(c)1.,
3 relating to operating an unauthorized multiple-employer
4 welfare arrangement, or s. 626.902(1)(b), relating to
5 representing or aiding an unauthorized insurer.
- 6 11. Chapter 687, relating to interest and usurious
7 practices.
- 8 12. Section 721.08, s. 721.09, or s. 721.13, relating
9 to real estate timeshare plans.
- 10 13. Chapter 782, relating to homicide.
- 11 14. Chapter 784, relating to assault and battery.
- 12 15. Chapter 787, relating to kidnapping.
- 13 16. Chapter 790, relating to weapons and firearms.
- 14 17. Section 796.03, s. 796.04, s. 796.05, or s.
15 796.07, relating to prostitution.
- 16 18. Chapter 806, relating to arson.
- 17 19. Section 810.02(2)(c), relating to specified
18 burglary of a dwelling or structure.
- 19 20. Chapter 812, relating to theft, robbery, and
20 related crimes.
- 21 21. Chapter 815, relating to computer-related crimes.
- 22 22. Chapter 817, relating to fraudulent practices,
23 false pretenses, fraud generally, and credit card crimes.
- 24 23. Section 827.071, relating to commercial sexual
25 exploitation of children.
- 26 24. Chapter 831, relating to forgery and
27 counterfeiting.
- 28 25. Chapter 832, relating to issuance of worthless
29 checks and drafts.
- 30 26. Section 836.05, relating to extortion.
- 31 27. Chapter 837, relating to perjury.

1 28. Chapter 838, relating to bribery and misuse of
2 public office.

3 29. Chapter 843, relating to obstruction of justice.

4 30. Section 847.011, s. 847.012, s. 847.013, s.
5 847.06, or s. 847.07, relating to obscene literature and
6 profanity.

7 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
8 or s. 849.25, relating to gambling.

9 32. Chapter 893, relating to drug abuse prevention and
10 control.

11 33. Section 914.22 or s. 914.23, relating to
12 witnesses, victims, or informants.

13 34. Section 918.12 or s. 918.13, relating to tampering
14 with jurors and evidence.

15 Section 12. For the purpose of incorporating the
16 amendment made by this act to section 210.18, Florida
17 Statutes, in a reference thereto, paragraph (a) of subsection
18 (1) of section 895.02, Florida Statutes, is reenacted to read:
19 895.02 Definitions.--As used in ss. 895.01-895.08, the
20 term:

21 (1) "Racketeering activity" means to commit, to
22 attempt to commit, to conspire to commit, or to solicit,
23 coerce, or intimidate another person to commit:

24 (a) Any crime which is chargeable by indictment or
25 information under the following provisions of the Florida
26 Statutes:

27 1. Section 210.18, relating to evasion of payment of
28 cigarette taxes.

29 2. Section 403.727(3)(b), relating to environmental
30 control.

31

- 1 3. Section 409.920 or s. 409.9201, relating to
2 Medicaid fraud.
- 3 4. Section 414.39, relating to public assistance
4 fraud.
- 5 5. Section 440.105 or s. 440.106, relating to workers'
6 compensation.
- 7 6. Section 465.0161, relating to distribution of
8 medicinal drugs without a permit as an Internet pharmacy.
- 9 7. Sections 499.0051, 499.0052, 499.00535, 499.00545,
10 and 499.0691, relating to crimes involving contraband and
11 adulterated drugs.
- 12 8. Part IV of chapter 501, relating to telemarketing.
- 13 9. Chapter 517, relating to sale of securities and
14 investor protection.
- 15 10. Section 550.235, s. 550.3551, or s. 550.3605,
16 relating to dogracing and horseracing.
- 17 11. Chapter 550, relating to jai alai frontons.
- 18 12. Chapter 552, relating to the manufacture,
19 distribution, and use of explosives.
- 20 13. Chapter 560, relating to money transmitters, if
21 the violation is punishable as a felony.
- 22 14. Chapter 562, relating to beverage law enforcement.
- 23 15. Section 624.401, relating to transacting insurance
24 without a certificate of authority, s. 624.437(4)(c)1.,
25 relating to operating an unauthorized multiple-employer
26 welfare arrangement, or s. 626.902(1)(b), relating to
27 representing or aiding an unauthorized insurer.
- 28 16. Section 655.50, relating to reports of currency
29 transactions, when such violation is punishable as a felony.
- 30 17. Chapter 687, relating to interest and usurious
31 practices.

- 1 18. Section 721.08, s. 721.09, or s. 721.13, relating
- 2 to real estate timeshare plans.
- 3 19. Chapter 782, relating to homicide.
- 4 20. Chapter 784, relating to assault and battery.
- 5 21. Chapter 787, relating to kidnapping.
- 6 22. Chapter 790, relating to weapons and firearms.
- 7 23. Section 796.03, s. 796.035, s. 796.04, s. 796.045,
- 8 s. 796.05, or s. 796.07, relating to prostitution and sex
- 9 trafficking.
- 10 24. Chapter 806, relating to arson.
- 11 25. Section 810.02(2)(c), relating to specified
- 12 burglary of a dwelling or structure.
- 13 26. Chapter 812, relating to theft, robbery, and
- 14 related crimes.
- 15 27. Chapter 815, relating to computer-related crimes.
- 16 28. Chapter 817, relating to fraudulent practices,
- 17 false pretenses, fraud generally, and credit card crimes.
- 18 29. Chapter 825, relating to abuse, neglect, or
- 19 exploitation of an elderly person or disabled adult.
- 20 30. Section 827.071, relating to commercial sexual
- 21 exploitation of children.
- 22 31. Chapter 831, relating to forgery and
- 23 counterfeiting.
- 24 32. Chapter 832, relating to issuance of worthless
- 25 checks and drafts.
- 26 33. Section 836.05, relating to extortion.
- 27 34. Chapter 837, relating to perjury.
- 28 35. Chapter 838, relating to bribery and misuse of
- 29 public office.
- 30 36. Chapter 843, relating to obstruction of justice.
- 31

1 37. Section 847.011, s. 847.012, s. 847.013, s.
2 847.06, or s. 847.07, relating to obscene literature and
3 profanity.

4 38. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
5 or s. 849.25, relating to gambling.

6 39. Chapter 874, relating to criminal street gangs.

7 40. Chapter 893, relating to drug abuse prevention and
8 control.

9 41. Chapter 896, relating to offenses related to
10 financial transactions.

11 42. Sections 914.22 and 914.23, relating to tampering
12 with a witness, victim, or informant, and retaliation against
13 a witness, victim, or informant.

14 43. Sections 918.12 and 918.13, relating to tampering
15 with jurors and evidence.

16 Section 13. For the 2005-2006 fiscal year, the sum of
17 \$480,028 is appropriated from the Alcoholic Beverage and
18 Tobacco Trust Fund and four full-time equivalent positions are
19 authorized to be established by the Department of Business and
20 Professional Regulation for the purpose of conducting
21 regulatory activities related to the transportation and sale
22 of cigarettes.

23 Section 14. From the funds generated by this act, the
24 sum of \$2 million is appropriated to the Department of Health
25 to address health care disparities in the minority community.

26 Section 15. Subsection (2) of section 17.41, Florida
27 Statutes, is amended to read:

28 17.41 Department of Financial Services Tobacco
29 Settlement Clearing Trust Fund.--

30 (2) Funds to be credited to the Tobacco Settlement
31 Clearing Trust Fund shall consist of payments received by the

1 state from settlement of State of Florida v. American Tobacco
2 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996) and fees from the
3 nonsettling-manufacturer fee collected pursuant to s.
4 210.0205. Moneys received from the settlement and fees that
5 are deposited into the trust fund are exempt from the service
6 charges imposed under s. 215.20.

7 Section 16. This act shall take effect July 1, 2005.

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10 SENATE SUMMARY

11 Imposes fees on the sale, handling, etc. in this state of
12 cigarettes of manufacturers not party to a described
13 tobacco settlement agreement and provides procedures for
14 implementing the collection of fees and for conducting
15 related procedural activities. (See bill for details.)
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