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HB 693, Engrossed 1

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1  
2 An act relating to the Department of Business and  
3 Professional Regulation; amending s. 210.01, F.S.;  
4 redefining the term "agent" as it relates to the  
5 cigarette tax, to conform to changes made by the act;  
6 amending s. 210.05, F.S.; deleting a provision that  
7 allows the cigarette tax to be paid by affixing a  
8 stamp insignia through a metering machine; amending s.  
9 210.07, F.S.; deleting provisions authorizing the use  
10 of metering machines; requiring retail dealers of  
11 cigarettes, rather than wholesale dealers, to affix to  
12 each such machine, in a conspicuous place, an  
13 identification sticker furnished by the Division of  
14 Alcoholic Beverages and Tobacco within the Department  
15 of Business and Professional Regulation; amending ss.  
16 210.11 and 210.12, F.S.; conforming provisions to  
17 changes made by the act; amending s. 210.15, F.S.;  
18 deleting a provision that prohibited the division from  
19 approving the use of meter machines to evidence the  
20 payment of the taxes on cigarettes except to qualified  
21 wholesale dealers; amending s. 210.18, F.S.;  
22 conforming provisions regarding penalties relating to  
23 the use of metering machines; amending s. 455.271,  
24 F.S.; deleting a provision that provides that a  
25 licensee of the department who changes from inactive  
26 to active status is not eligible to return to inactive  
27 status until the licensee thereafter completes a  
28 licensure cycle on active status; amending s. 475.02,

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29 F.S.; conforming a provision to changes made by the  
30 act; amending s. 475.180, F.S.; deleting a provision  
31 that requires an applicant for a real estate license  
32 who is not a resident of this state to file an  
33 irrevocable consent regarding lawsuits and actions  
34 commenced against the applicant; deleting provisions  
35 prescribing the method of service of process; amending  
36 s. 475.451, F.S.; deleting the requirement that an  
37 applicant to be chief administrator of a proprietary  
38 real estate school or state institution meet certain  
39 qualifications for licensure as a broker associate or  
40 sales associate and other minimal requirements;  
41 deleting the definition of the term "chief  
42 administrative person" as it relates to schools  
43 teaching real estate practice; repealing s.  
44 475.6235(7), F.S., relating to a nonresidential  
45 applicant's requirement to file an irrevocable consent  
46 regarding lawsuits and actions against an appraisal  
47 management company; amending s. 475.631, F.S.;  
48 deleting the provision that requires an applicant for  
49 licensure as an appraiser who is not a resident of  
50 this state to file an irrevocable consent regarding  
51 lawsuits and actions commenced against the applicant;  
52 deleting the method of service of process; repealing  
53 s. 476.124, F.S., relating to certain application  
54 requirements for licensing examinations in barbering;  
55 amending s. 561.23, F.S.; deleting the requirement  
56 that licenses issued under the Beverage Law be issued

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57 | in duplicate; amending s. 565.07, F.S.; allowing  
 58 | certain high-proof distilled spirits to be distilled,  
 59 | bottled, packaged, or processed for export or sale  
 60 | outside this state; providing an effective date.

61 |  
 62 | Be It Enacted by the Legislature of the State of Florida:

63 |  
 64 | Section 1. Subsection (9) of section 210.01, Florida  
 65 | Statutes, is amended to read:

66 | 210.01 Definitions.—When used in this part the following  
 67 | words shall have the meaning herein indicated:

68 | (9) "Agent" means any person authorized by the Division of  
 69 | Alcoholic Beverages and Tobacco to purchase and affix adhesive  
 70 | ~~or meter~~ stamps under this part.

71 | Section 2. Subsection (1) of section 210.05, Florida  
 72 | Statutes, is amended to read:

73 | 210.05 Preparation and sale of stamps; discount.—

74 | (1) The tax imposed by this part shall be paid by affixing  
 75 | stamps in the manner herein set forth ~~or by affixing stamp~~  
 76 | ~~insignia through the device of metering machines authorized in~~  
 77 | ~~this part.~~

78 | Section 3. Section 210.07, Florida Statutes, is amended to  
 79 | read:

80 | 210.07 Metering Machines.—

81 | ~~(1)(a) The tax may also be paid through the use of~~  
 82 | ~~cigarette tax stamp insignia to be applied by the use of~~  
 83 | ~~metering machines. The division shall prescribe and promulgate~~  
 84 | ~~appropriate rules and regulations governing the use of metering~~

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85 ~~machines, the procedure for the payment of such cigarette taxes~~  
 86 ~~through the use thereof, requiring adequate surety bonds of the~~  
 87 ~~users thereof to assure the proper use of such machines and~~  
 88 ~~payment of all cigarette taxes that might come due by the users~~  
 89 ~~thereof, and all other rules and regulations necessary and~~  
 90 ~~proper to govern the use of same.~~

91 ~~(b) The provisions of s. 210.05(3) (a) and (b) shall be~~  
 92 ~~applicable to cigarette taxes paid through the use of metering~~  
 93 ~~machines.~~

94 ~~(2) All provisions of this part governing the use of~~  
 95 ~~cigarette tax stamps, the compiling of records, the making of~~  
 96 ~~reports, permits and revocation of permits, seizures and~~  
 97 ~~forfeitures, penalties, and all other provisions pertaining to~~  
 98 ~~the payment of cigarette taxes through the use of stamps, shall~~  
 99 ~~likewise be applicable to the payment of said taxes through the~~  
 100 ~~use of metering machines.~~

101 ~~(1)(3) Wholesale or Retail~~ dealers of cigarettes owning,  
 102 leasing, furnishing, or operating cigarette vending machines  
 103 shall affix to each such machine, in a conspicuous place, an  
 104 identification sticker furnished by the division. Every sticker  
 105 shall show the vending machine serial number and the name and  
 106 address of the cigarette ~~wholesale or~~ retail dealer owning,  
 107 leasing, furnishing, or operating the said vending machine.

108 ~~(2)(4) A person may not operate a~~ A person may not operate a ~~no~~ vending machine ~~shall~~  
 109 ~~be allowed to operate in the state unless that does not have~~  
 110 ~~affixed thereto the identification sticker required by this~~  
 111 ~~section is affixed to the vending machine. A person may not~~  
 112 ~~operate a nor shall any vending machine be allowed to operate in~~

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113 the state which ~~that~~ does not display at all times at least one  
 114 package of each brand of the packages located therein so the  
 115 same are clearly visible and arranged in such a manner that the  
 116 cigarette tax stamps ~~or meter impressions of stamps~~ affixed  
 117 thereto are clearly visible. A ~~It shall be the duty of any~~  
 118 person, firm, or corporation operating a cigarette vending  
 119 machine in this state must ~~to~~ furnish to the division the  
 120 location of the vending machine and ~~to~~ report within 30 days to  
 121 the division any change of location of the vending machine.

122 Section 4. Section 210.11, Florida Statutes, is amended to  
 123 read:

124 210.11 Refunds; sales of stamps and payment of tax.—  
 125 Whenever any cigarettes upon which stamps have been placed, ~~or~~  
 126 ~~upon which the tax has been paid by metering machine,~~ have been  
 127 sold and shipped into another state for sale or use therein, or  
 128 have become unfit for use and consumption or unsalable, or have  
 129 been destroyed, the dealer involved shall be entitled to a  
 130 refund or credit of the actual amount of the tax paid with  
 131 respect to such cigarettes less any discount allowed by the  
 132 division in the sale of the stamps ~~or payment of the tax by~~  
 133 ~~metering machine,~~ upon receipt of satisfactory evidence of the  
 134 dealer's right to receive such refund or credit, provided  
 135 application for refund or credit is made within 9 months after  
 136 ~~of~~ the date the cigarettes were shipped out of the state, became  
 137 unfit, or were destroyed. Only the division shall sell, or offer  
 138 for sale, any stamp or stamps issued under this part. The  
 139 division may redeem unused stamps lawfully in the possession of  
 140 any person. The division may prescribe necessary rules ~~and~~

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141 ~~regulations~~ concerning refunds, credits, sales of stamps, and  
 142 redemptions under the provisions of this part. Appropriation is  
 143 hereby made out of revenues collected under this part for  
 144 payment of such allowances.

145 Section 5. Subsection (1) of section 210.12, Florida  
 146 Statutes, is amended to read:

147 210.12 Seizures; forfeiture proceedings.—

148 (1) The state, acting by and through the division, may  
 149 ~~shall be authorized and empowered to~~ seize, confiscate, and  
 150 forfeit any cigarettes upon which taxes payable hereunder may be  
 151 unpaid or which ~~that~~ are otherwise held in violation of the  
 152 requirements of this chapter, and also any vending machine or  
 153 receptacle in which cigarettes upon which taxes have not been  
 154 paid are held for sale, or any vending machine that does not  
 155 have affixed thereto the identification sticker required by ~~the~~  
 156 ~~provisions of~~ s. 210.07, or that ~~which~~ does not display at all  
 157 times at least one package of each brand of cigarettes located  
 158 therein so the same is clearly visible and arranged in such a  
 159 manner that the cigarette tax stamp ~~or meter impression of the~~  
 160 ~~stamp~~ affixed thereto is clearly visible. Such seizure may be  
 161 made by the division, its duly authorized representative, any  
 162 sheriff or deputy sheriff, or any police officer.

163 Section 6. Subsection (2) of section 210.15, Florida  
 164 Statutes, is amended to read:

165 210.15 Permits.—

166 (2) The division may not furnish stamps ~~or approve the use~~  
 167 ~~of meter machines~~ to evidence the payment of the taxes on  
 168 cigarettes except to qualified wholesale dealers.

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169 Section 7. Subsection (3) of section 210.18, Florida  
 170 Statutes, is amended to read:

171 210.18 Penalties for tax evasion; reports by sheriffs.—

172 (3) Any person who falsely or fraudulently makes, forges,  
 173 alters, or counterfeits any stamp ~~or impression die used in~~  
 174 ~~meter machines~~ prescribed by the division under the provisions  
 175 of this part; ~~or, with intent to evade taxes, jams, tampers~~  
 176 ~~with, or alters such a machine;~~ or causes or procures to be  
 177 falsely or fraudulently made, forged, altered, or counterfeited  
 178 any such stamp ~~or die;~~ or knowingly and willfully utters,  
 179 purchases, passes or tenders as true any such false, altered, or  
 180 counterfeited stamp ~~or die impression;~~ or, with the intent to  
 181 defraud the state, fails to comply with any other requirement of  
 182 this part commits a felony of the third degree, punishable as  
 183 provided in s. 775.082, s. 775.083, or s. 775.084.

184 Section 8. Subsection (2) of section 455.271, Florida  
 185 Statutes, is amended to read:

186 455.271 Inactive and delinquent status.—

187 (2) Each board, or the department when there is no board,  
 188 shall permit a licensee to choose, at the time of licensure  
 189 renewal, an active or inactive status. ~~However, a licensee who~~  
 190 ~~changes from inactive to active status is not eligible to return~~  
 191 ~~to inactive status until the licensee thereafter completes a~~  
 192 ~~licensure cycle on active status.~~

193 Section 9. Subsection (3) of section 475.02, Florida  
 194 Statutes, is amended to read:

195 475.02 Florida Real Estate Commission.—

196 (3) Notwithstanding s. 112.313, any member of the

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197 commission who is a licensed real estate broker or sales  
198 associate and who holds an active real estate school permit,  
199 ~~chief administrator permit,~~ school instructor permit, or any  
200 combination of such permits issued by the department, to the  
201 extent authorized pursuant to such permit, may offer, conduct,  
202 or teach any course prescribed or approved by the commission or  
203 the department.

204 Section 10. Subsection (2) of section 475.180, Florida  
205 Statutes, is amended to read:

206 475.180 Nonresident licenses.—

207 ~~(2) (a) Any applicant who is not a resident of this state  
208 shall file an irrevocable consent that suits and actions may be  
209 commenced against her or him in any county of this state in  
210 which a plaintiff having a cause of action or suit against her  
211 or him resides, and that service of any process or pleading in  
212 suits or actions against her or him may be made by delivering  
213 the process or pleading to the director of the Division of Real  
214 Estate by certified mail, return receipt requested, and also to  
215 the licensee by registered mail addressed to the licensee at her  
216 or his designated principal place of business. Service, when so  
217 made, must be taken and held in all courts to be as valid and  
218 binding upon the licensee as if made upon her or him in this  
219 state within the jurisdiction of the court in which the suit or  
220 action is filed. The irrevocable consent must be in a form  
221 prescribed by the department and be acknowledged before a notary  
222 public.~~

223 (a) ~~(b)~~ Any resident licensee who becomes a nonresident  
224 shall, within 60 days, notify the commission of the change in

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225 residency and comply with nonresident requirements. Failure to  
 226 notify and comply is a violation of the license law, subject to  
 227 the penalties in s. 475.25.

228 (b)~~(e)~~ All nonresident applicants and licensees shall  
 229 comply with all requirements of commission rules and this part.  
 230 The commission may adopt rules necessary for the regulation of  
 231 nonresident licensees.

232 Section 11. Subsection (2) of section 475.451, Florida  
 233 Statutes, is amended to read:

234 475.451 Schools teaching real estate practice.—

235 (2) An applicant for a permit to operate a proprietary  
 236 real estate school, ~~to be a chief administrator of a proprietary~~  
 237 ~~real estate school or a state institution,~~ or to be an  
 238 instructor for a proprietary real estate school or a state  
 239 institution must meet the qualifications for practice set forth  
 240 in s. 475.17(1) and the following minimal requirements:

241 (a) "School permitholder" means the individual who is  
 242 responsible for directing the overall operation of a proprietary  
 243 real estate school. A school permitholder must be the holder of  
 244 a license as a broker, either active or voluntarily inactive, or  
 245 must have passed an instructor's examination approved by the  
 246 commission. A school permitholder must also meet the  
 247 requirements of a school instructor if actively engaged in  
 248 teaching.

249 ~~(b) "Chief administrative person" means the individual who~~  
 250 ~~is responsible for the administration of the overall policies~~  
 251 ~~and practices of the institution or proprietary real estate~~  
 252 ~~school. A chief administrative person must also meet the~~

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253 ~~requirements of a school instructor if actively engaged in~~  
 254 ~~teaching.~~

255 (b)~~(e)~~ "School instructor" means an individual who  
 256 instructs persons in the classroom in noncredit college courses  
 257 in a college, university, or community college or courses in a  
 258 career center or proprietary real estate school.

259 1. Before commencing to provide such instruction, the  
 260 applicant must certify the applicant's competency and obtain an  
 261 instructor permit by meeting one of the following requirements:

262 a. Hold a bachelor's degree in a business-related subject,  
 263 such as real estate, finance, accounting, business  
 264 administration, or its equivalent and hold a valid broker's  
 265 license in this state.

266 b. Hold a bachelor's degree, have extensive real estate  
 267 experience, as defined by rule, and hold a valid broker's  
 268 license in this state.

269 c. Pass an instructor's examination approved by the  
 270 commission.

271 2. Any requirement by the commission for a teaching  
 272 demonstration or practical examination must apply to all school  
 273 instructor applicants.

274 3. The department shall renew an instructor permit upon  
 275 receipt of a renewal application and fee. The renewal  
 276 application shall include proof that the permitholder has, since  
 277 the issuance or renewal of the current permit, successfully  
 278 completed a minimum of 7 classroom hours of instruction in real  
 279 estate subjects or instructional techniques, as prescribed by  
 280 the commission. The commission shall adopt rules providing for

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281 the renewal of instructor permits at least every 2 years. Any  
 282 permit that ~~which~~ is not renewed at the end of the permit period  
 283 established by the department ~~shall~~ automatically reverts ~~revert~~  
 284 to involuntarily inactive status.

285  
 286 The department may require an applicant to submit names of  
 287 persons having knowledge concerning the applicant and the  
 288 enterprise; may propound interrogatories to such persons and to  
 289 the applicant concerning the character of the applicant,  
 290 including the taking of fingerprints for processing through the  
 291 Federal Bureau of Investigation; and shall make such  
 292 investigation of the applicant or the school or institution as  
 293 it may deem necessary to the granting of the permit. If an  
 294 objection is filed, it shall be considered in the same manner as  
 295 objections or administrative complaints against other applicants  
 296 for licensure by the department.

297 Section 12. Subsection (7) of section 475.6235, Florida  
 298 Statutes, is repealed.

299 Section 13. Subsection (2) of section 475.631, Florida  
 300 Statutes, is amended to read:

301 475.631 Nonresident licenses and certifications.—

302 ~~(2)(a) An applicant who is not a resident of this state~~  
 303 ~~shall file an irrevocable consent that suits and actions may be~~  
 304 ~~commenced against her or him in any county of this state in~~  
 305 ~~which a plaintiff having a cause of action or suit against her~~  
 306 ~~or him resides and that service of any process or pleading in~~  
 307 ~~suits or actions against her or him may be made by delivering~~  
 308 ~~the process or pleading to the director of the Division of Real~~

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309 ~~Estate by certified mail, return receipt requested, and also to~~  
 310 ~~the certified appraiser or licensee by registered mail addressed~~  
 311 ~~to the certified appraiser or licensee at her or his designated~~  
 312 ~~principal place of business. Service, when so made, must be~~  
 313 ~~taken and held in all courts to be as valid and binding upon the~~  
 314 ~~certified appraiser or licensee as if made upon her or him in~~  
 315 ~~this state within the jurisdiction of the court in which the~~  
 316 ~~suit or action is filed. The irrevocable consent must be in a~~  
 317 ~~form prescribed by the department and be acknowledged before a~~  
 318 ~~notary public.~~

319 (a) ~~(b)~~ Any resident state-certified appraiser who becomes  
 320 a nonresident shall, within 60 days, notify the board of the  
 321 change in residency and comply with nonresident requirements.  
 322 Failure to notify and comply is a violation of the license law,  
 323 subject to the penalties in s. 475.624.

324 (b) ~~(e)~~ All nonresident applicants, certified appraisers,  
 325 and licensees shall comply with all requirements of board rules  
 326 and this part. The board may adopt rules pursuant to ss.  
 327 120.536(1) and 120.54 necessary for the regulation of  
 328 nonresident certified appraisers and licensees.

329 Section 14. Section 476.124, Florida Statutes, is  
 330 repealed.

331 Section 15. Section 561.23, Florida Statutes, is amended  
 332 to read:

333 561.23 License issued in duplicate; display.—

334 ~~(1) Licenses shall be issued in duplicate. The original~~  
 335 ~~license shall be delivered to the licensee; and one copy shall~~  
 336 ~~be retained by the division.~~

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337           ~~(2)~~ All vendors licensed under the Beverage Law shall  
 338 display their licenses in conspicuous places on their licensed  
 339 premises.

340           Section 16. Section 565.07, Florida Statutes, is amended  
 341 to read:

342           565.07 Sale or consumption of certain distilled spirits  
 343 prohibited.—A ~~No~~ distilled spirit greater than 153 proof may not  
 344 ~~shall be sold, processed, or consumed in the state. However, a~~  
 345 distilled spirit greater than 153 proof may be distilled,  
 346 bottled, packaged, or processed for export or sale outside the  
 347 state.

348           Section 17. This act shall take effect upon becoming a  
 349 law.