

By Senator Farmer

34-00828-17

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1 A bill to be entitled
2 An act relating to the cigarette surcharge and tax;
3 amending ss. 210.011 and 210.02, F.S.; revising the
4 amounts and applicability of the cigarette surcharge
5 and tax, respectively, which are levied upon the sale,
6 receipt, purchase, possession, consumption, handling,
7 distribution, and use of cigarettes; defining the term
8 "standard package of cigarettes"; conforming
9 provisions to changes made by the act; making
10 technical changes; amending s. 210.04, F.S.; deleting
11 provisions that authorize the Division of Alcoholic
12 Beverages and Tobacco of the Department of Business
13 and Professional Regulation to authorize manufacturers
14 to distribute specified free sample packages of
15 cigarettes without affixing surcharge and tax stamps
16 under certain circumstances and that provide the basis
17 for a certain surcharge and tax; amending ss. 210.06
18 and 210.085, F.S.; conforming provisions to changes
19 made by the act; amending s. 215.5602, F.S.;
20 conforming a cross-reference; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 210.011, Florida Statutes, is amended to
26 read:

27 210.011 Cigarette surcharge levied; collection.-

28 (1) A surcharge of \$2, in addition to all other taxes of
29 every kind levied by law, is levied upon the sale, receipt,

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30 purchase, possession, consumption, handling, distribution, and
31 use of cigarettes in this state, ~~in the following amounts,~~
32 ~~except as otherwise provided in subsections (2)-(5),~~ for a
33 standard package of cigarettes. For purposes of this section,
34 the term "standard package of cigarettes" means a package of no
35 fewer than 20 cigarettes, as required under 21 C.F.R. s.
36 1140.16(b) of standard dimensions:

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

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

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

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

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

58 ~~(a) Packages containing 10 cigarettes or fewer require a~~

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59 ~~surcharge of 50 cents.~~

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

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

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

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

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

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

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

78 (3)~~(6)~~ This surcharge shall be paid by the dealer to the
79 division for deposit and distribution as hereinafter provided
80 upon the first sale or transaction within the state, whether
81 such sale or transfer is to the ultimate purchaser or consumer.
82 The seller or dealer shall collect the surcharge from the
83 purchaser or consumer, and the purchaser or consumer shall pay
84 the surcharge to the seller. The seller or dealer is responsible
85 for the collection of the surcharge and payment of the surcharge
86 to the division. All surcharges are due not later than the 10th
87 day of the month following the calendar month in which they were

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88 incurred, and thereafter shall bear interest at the rate of 1
89 percent per month. If the amount of surcharge due for a given
90 period is assessed without allocating it to any particular
91 month, the interest begins accruing on the date of the
92 assessment. Whenever cigarettes are shipped from outside the
93 state to anyone other than a distributing agent or wholesale
94 dealer, the person receiving the cigarettes is responsible for
95 the surcharge on the cigarettes and payment of the surcharge to
96 the division.

97 ~~(4)(7)~~ It is the legislative intent that the surcharge on
98 cigarettes be uniform throughout the state.

99 ~~(5)(8)~~ The surcharge levied under this section shall be
100 administered, collected, and enforced in the same manner as the
101 tax imposed under s. 210.02.

102 ~~(6)(9)~~ Revenue produced from the surcharge levied under
103 this section shall be deposited into the Health Care Trust Fund
104 within the Agency for Health Care Administration.

105 Section 2. Section 210.02, Florida Statutes, is amended to
106 read:

107 210.02 Cigarette tax imposed; collection.—

108 (1) An excise or privilege tax of 33.9 cents, in addition
109 to all other taxes of every kind imposed by law, is imposed upon
110 the sale, receipt, purchase, possession, consumption, handling,
111 distribution, and use of cigarettes in this state, ~~in the~~
112 ~~following amounts, except as hereinafter otherwise provided,~~ for
113 a standard package of cigarettes. For purposes of this section,
114 the term "standard package of cigarettes" means a package of no
115 fewer than 20 cigarettes, as required under 21 C.F.R. s.
116 1140.16(b) of standard dimensions.

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

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

122 ~~(c) Upon all cigarettes weighing more than 3 pounds per~~
123 ~~thousand and more than 6 inches long, 67.8 mills on each~~
124 ~~cigarette.~~

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

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

138 ~~(a) Packages containing 10 cigarettes or less require a~~
139 ~~16.95-cent tax.~~

140 ~~(b) Packages containing more than 10 but not more than 20~~
141 ~~cigarettes require a 33.9-cent tax.~~

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

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146 ~~(a) Packages containing 10 cigarettes or less require a~~
147 ~~33.9-cent tax.~~

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

150 ~~(5) When cigarettes as described in paragraph (1)(c) are~~
151 ~~packed in varying quantities of 20 cigarettes or less, except~~
152 ~~manufacturer's free samples authorized under s. 210.04(9), the~~
153 ~~following rates shall govern:~~

154 ~~(a) Packages containing 10 cigarettes or less require a~~
155 ~~67.8-cent tax.~~

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

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

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175 ~~the said~~ cigarettes and ~~the~~ payment of the tax ~~same~~ to the
176 division.

177 ~~(4)(7)~~ It is the legislative intent that the tax on
178 cigarettes ~~shall~~ be uniform throughout the state.

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

181 210.04 Construction; exemptions; collection.—

182 (9) Agents~~,~~ located within or without the state~~,~~ shall
183 purchase stamps and affix such stamps in the manner prescribed
184 to packages or containers of cigarettes to be sold, distributed,
185 or given away within the state, in which case any dealer
186 subsequently receiving such stamped packages of cigarettes will
187 not be required to purchase and affix stamps on such packages of
188 cigarettes. ~~However, the division may, in its discretion,~~
189 ~~authorize manufacturers to distribute in the state free sample~~
190 ~~packages of cigarettes containing not less than 2 or more than~~
191 ~~20 cigarettes without affixing any surcharge and tax stamps~~
192 ~~provided copies of shipping invoices on such cigarettes are~~
193 ~~furnished, and payment of all surcharges and taxes imposed on~~
194 ~~such cigarettes by law is made, directly to the division not~~
195 ~~later than the 10th day of each calendar month. The surcharge~~
196 ~~and tax on cigarettes in sample packages shall be based on a~~
197 ~~unit in accordance with the surcharges levied under s.~~
198 ~~210.011(1) and the taxing provisions of s. 210.02(1).~~

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

201 210.06 Affixation of stamps; presumption.—

202 (5) Except as provided in ~~s. 210.04(9) or~~ s. 210.09(1), no
203 person, other than a dealer or distributing agent that receives

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204 unstamped cigarette packages directly from a cigarette
205 manufacturer or importer in accordance with this section and s.
206 210.085, shall hold or possess an unstamped cigarette package.
207 Dealers shall be permitted to set aside, without application of
208 stamps, only such part of the dealer's stock which ~~that~~ is
209 identified for sale or distribution outside this state. If a
210 dealer maintains stocks of unstamped cigarette packages, such
211 unstamped packages shall be stored separately from stamped
212 product packages. No unstamped cigarette packages shall be
213 transferred by a dealer to another facility of the dealer within
214 this state or to another person within this state.

215 Section 5. Section 210.085, Florida Statutes, is amended to
216 read:

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

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233 may obtain cigarettes only from a dealer with a valid, current
234 permit under s. 210.15.

235 Section 6. Paragraph (a) of subsection (12) of section
236 215.5602, Florida Statutes, is amended to read:

237 215.5602 James and Esther King Biomedical Research
238 Program.—

239 (12) (a) Each fiscal year, \$25 million from the revenue
240 deposited into the Health Care Trust Fund pursuant to ss.
241 210.011(6) and 210.276(7) ~~ss. 210.011(9) and 210.276(7)~~ shall be
242 reserved for research of tobacco-related or cancer-related
243 illnesses. Of the revenue deposited in the Health Care Trust
244 Fund pursuant to this section, \$25 million shall be transferred
245 to the Biomedical Research Trust Fund within the Department of
246 Health. Subject to annual appropriations in the General
247 Appropriations Act, \$5 million shall be appropriated to the
248 James and Esther King Biomedical Research Program, and \$5
249 million shall be appropriated to the William G. "Bill" Bankhead,
250 Jr., and David Coley Cancer Research Program created under s.
251 381.922.

252 Section 7. This act shall take effect July 1, 2017.