

House Bill No. 205

An act relating to contraband and counterfeit cigarettes; providing additional regulatory and enforcement measures; amending s. 210.01, F.S.; revising and providing definitions; amending s. 210.021, F.S.; directing the Secretary of Business and Professional Regulation to require certain dealers and agents to remit the tax on cigarettes by certified check or electronic funds transfer; requiring the Division of Alcoholic Beverages and Tobacco of the department to adopt rules governing the payment of taxes by electronic funds transfer; amending s. 210.06, F.S.; revising requirements for and limitations on the affixation of stamps; providing requirements with respect to receipt, possession, storage, and transport of unstamped cigarette packages; amending s. 210.08, F.S.; revising the amount of the surety bond, certificate of deposit, or irrevocable letter of credit required by the division as surety for the payment of cigarette taxes; creating s. 210.085, F.S.; requiring manufacturers, importers, distributing agents, dealers, and retail dealers to hold a current, valid permit to sell, distribute, or receive cigarettes; amending s. 210.09, F.S.; providing notice and filing guidelines for certain persons shipping unstamped cigarette packages; authorizing certain law enforcement officials to inspect certain shipping vehicles; providing for application to and records requirements of manufacturers and importers; amending s. 210.12, F.S.; authorizing the state to claim certain property and materials from certain dealers and retailers who attempt to defraud the state; authorizing the destruction of certain cigarettes; amending s. 210.15, F.S.; providing criteria for permit application; prohibiting issuance, maintenance, or renewal of certain permits for certain applicants; providing guidelines for permit application denial; amending s. 210.16, F.S.; revising the authority of the Division of Alcoholic Beverages and Tobacco to revoke or suspend the permits of certain persons under certain circumstances; revising a penalty period for revoked permits; increasing a civil penalty; amending s. 210.18, F.S.; expanding the group of violators subject to criminal liability; expanding the list of persons required to report seizures of unstamped cigarettes; requiring the division to keep certain records; providing for seizure of counterfeit cigarettes and related machinery; making unlawful the selling or possessing with intent to sell counterfeit cigarettes; providing criminal penalties; providing for destruction of counterfeit cigarettes; creating s. 210.181, F.S.; providing civil penalties for failure to comply with certain duties or pay certain taxes; reenacting ss. 772.102(1)(a) and 895.02(1)(a), F.S., relating to crimes constituting a “criminal activity” and definitions as used in the Florida RICO Act, to incorporate the amendment to s. 210.18, F.S., in references thereto; providing an effective date.

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

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

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

(6) “Wholesale dealer” means any person located inside or outside this state who sells cigarettes to retail dealers or other persons for purposes of resale only, ~~or any person who operates more than one cigarette vending machine located in more than one place of business.~~ Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. s. 5712 if such person sells or distributes cigarettes in this state only to dealers who are agents and who hold valid and current permits under s. 210.15 or to any cigarette manufacturer, export warehouse proprietor, or importer who holds a valid and current permit under 26 U.S.C. s. 5712.

(7) “Retail dealer” means any person located inside or outside this state other than a wholesale dealer engaged in the business of selling cigarettes, including persons issued a permit pursuant to s. 569.003.

(19) “Stamp” or “stamps” means the indicia required to be placed on cigarette packages that evidence payment of the tax on cigarettes under s. 210.02.

(20) “Importer” means any person with a valid permit under 26 U.S.C. s. 5712 who imports into the United States, directly or indirectly, a finished cigarette for sale or distribution.

(21) “Manufacturer” means any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 that manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(22) “Counterfeit cigarettes” means cigarettes that have false manufacturing labels, tobacco product packs with counterfeit tax stamps, or any combination thereof.

Section 2. Section 210.021, Florida Statutes, is amended to read:

210.021 Payment of taxes by certified check or electronic funds transfer.—

(1) The Secretary of Business and Professional Regulation may require a dealer who sells cigarettes within the state to remit by certified check or electronic funds transfer any tax imposed under s. 210.02 ~~if the taxpayer is subject to the tax and if the total of such taxes he or she paid in the prior year amounted to \$50,000 or more.~~

(2) The Secretary of Business and Professional Regulation shall require for a period not to exceed 12 months that a dealer or agent, during the dealer’s or agent’s initial period of licensure or appointment, remit by certified check or electronic funds transfer any tax imposed under s. 210.02.

(3) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

Section 3. Subsection (1) of section 210.06, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

210.06 Affixation of stamps; presumption.—

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

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

(b) No stamp shall be applied to any cigarette package exempt from tax under 26 U.S.C. s. 5704 that is distributed by a manufacturer pursuant to federal regulations.

(c) Dealers may apply stamps only to cigarette packages received directly from a manufacturer or importer of cigarettes, or a distributing agent representing a manufacturer or importer of cigarettes, who possesses a valid and current permit under this part.

(5) Except as provided in s. 210.04(9) or s. 210.09(1), no person, other than a dealer or distributing agent that receives unstamped cigarette packages directly from a cigarette manufacturer or importer in accordance with this section and s. 210.085, shall hold or possess an unstamped cigarette package. Dealers shall be permitted to set aside, without application of stamps, only such part of the dealer's stock that is identified for sale or distribution outside this state. If a dealer maintains stocks of unstamped cigarette packages, such unstamped packages shall be stored separately from stamped product packages. No unstamped cigarette packages shall be transferred by a dealer to another facility of the dealer within this state or to another person within this state.

Section 4. Section 210.08, Florida Statutes, is amended to read:

210.08 Bond for payment of taxes.—Each dealer, agent, or distributing agent shall file with the division a surety bond, certificate of deposit, or irrevocable letter of credit acceptable to the division in an amount equal to 110 percent of the estimated tax liability for 30 days, but not less than \$2,000 ~~the sum of \$10,000 as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by the dealer, agent, or distributing agent is of such volume that a bond, certificate of deposit, or irrevocable letter of credit of less than \$10,000 will be adequate to secure the payment of all taxes assessed as authorized by the cigarette tax law, the division may accept a bond, certificate of deposit, or irrevocable letter of credit in a lesser sum than \$10,000, but in no~~

event shall it accept a bond, certificate of deposit, or irrevocable letter of credit of less than \$1,000, and it may at any time in its discretion require any bond, certificate of deposit, or irrevocable letter of credit in an amount less than \$10,000 to be increased not to exceed \$10,000.

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

210.085 Transactions only with permitted manufacturers, importers, distributing agents, dealers, and retail dealers.—Except as otherwise provided in s. 210.04(9), a manufacturer or importer, or a distributing agent representing a manufacturer or importer, may sell or distribute cigarettes to a person located or doing business within this state only if such person is a dealer or importer with a valid, current permit under s. 210.15. A distributing agent may accept cigarettes from a manufacturer or importer with a valid, current permit for transfer to a dealer with a valid, current permit but may not own or sell cigarettes. A dealer may sell or distribute cigarettes to a person located or doing business within this state only if such person is a dealer or retail dealer with a valid, current permit under s. 569.003. A dealer may obtain cigarettes only from a manufacturer or importer or from a distributing agent or dealer with a valid, current permit under s. 210.15. A retail dealer may obtain cigarettes only from a dealer with a valid, current permit under s. 210.15.

Section 6. Subsections (1), (2), and (3) and paragraph (a) of subsection (4) of section 210.09, Florida Statutes, are amended to read:

210.09 Records to be kept; reports to be made; examination.—

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

(b) Any person who ships unstamped cigarette packages into this state other than to a manufacturer, an importer, or a distributing agent representing a manufacturer or an importer, or dealer holding a valid, current permit pursuant to s. 210.15 shall first file with the division a notice of such shipment. This paragraph shall not apply to any common or contract carrier that:

1. Is transporting cigarettes through this state to another location outside this state under a proper bill of lading or freight bill that states the quantity, source, and destination of such cigarettes or to cigarettes shipped or otherwise transported pursuant to s. 210.04(9); or

2. Does not issue paper bills of lading or freight bills and does not obtain specific information about the contents of the shipment that includes a description of the freight carried but uses electronic shipping documents as part of its ordinary course of business to provide transportation services for individually addressed packages weighing less than 150 pounds, which elec-

tronic shipping documents shall be made available for inspection upon request.

(c) In any case in which the division or its duly authorized agent, or any law enforcement officer of this state, has probable cause to believe that any vehicle is transporting cigarettes in violation of this part, the division, such agent, or such law enforcement officer is authorized to stop such vehicle and inspect the vehicle for contraband cigarettes.

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities, and opportunity for such examinations as are herein provided for and required.

(4)(a) All persons who are either cigarette manufacturers, importers, wholesalers, ~~vending machine operators~~ or distributing agents, and agents and employees of the same, are required to keep daily sales tickets or invoices of cigarette sales and it shall be the duty of said persons to see that each sales ticket and invoice handled by them or on behalf of them show the correct name and address to whom sold and the number of packages or cartons of each brand sold. It shall also be the duty of said persons to see that each sales ticket or invoice correctly shows whether the same is inside or outside of a qualified municipality and if the sale is made within the limits of a qualified municipality, the correct name of the municipality must be indicated.

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

210.12 Seizures; forfeiture proceedings.—

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

(2) All fixtures, equipment, and other materials and personal property on the premises of any dealer, retail dealer, or distributing agent who, with intent to defraud the state, fails to keep or make any record, return, report, or inventory required by this part; keeps or makes any false or fraudulent record, return, report, or inventory required by this part; refuses to pay any tax imposed by this part; or attempts in any manner to evade or defeat the requirements of this part shall be forfeited to the state as provided by the Florida Contraband Forfeiture Act.

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

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

210.15 Permits.—

(1)(a) Every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes ~~deal in cigarettes as a distributing agent, wholesale dealer, or exporter~~ within this state shall file with the division an application for a cigarette permit for each place of business located within this state or, in the absence of such place of business in this state, for wherever its principal place of business is located with the Division of Alcoholic Beverages and Tobacco. Every application for a cigarette permit shall be made on forms furnished by the division and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business within the state, if any, and such other information as the division may require. If the applicant has or intends to have more than one place of business dealing in cigarettes within this state, the application shall state the location of each place of business. If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof and any other information prescribed by the division for the purpose of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural

person, and in the case of an association or partnership, members or partners thereof, and in the case of a corporation, by an executive officer thereof or by any person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of this authority. ~~The cigarette permit for a distributing agent shall be issued annually for which an annual fee of \$5 shall be charged.~~

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

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

(c) No distributing agent, wholesale dealer, or exporter permit under this part or chapter 569 shall be issued, maintained, or renewed if the applicant, its officers, or any person or persons owning directly or indirectly, in the aggregate, more than 10 percent of the ownership interests in the applicant:

1. Has been finally adjudicated as owing \$500 or more in delinquent cigarette taxes;

2. Had a permit revoked by the division within the previous 2 years;

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

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

5. Has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. s. 1681a; or

6. Has imported, or caused to be imported, into the United States, or manufactured for sale or distribution in the United States, any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. ss. 1331 et seq.).

~~(d) The division may refuse to issue a distributing agent, wholesale, or exporter permit to any person, firm, or corporation whose permit under the~~

cigarette law has been revoked, or to any corporation, an officer of which has had his or her permit under the cigarette law revoked, or to any person who is or has been an officer of a corporation whose permit has been revoked under the cigarette law. Any permit issued to a firm or corporation prohibited from obtaining such permit under the cigarette law may be revoked by the division.

(e) Prior to an application for a distributing agent, wholesale dealer, or exporter permit being approved, the applicant shall file a set of fingerprints on forms provided by the division. The applicant shall also file a set of fingerprints for any person or persons interested directly or indirectly with the applicant in the business for which the permit is being sought, when so required by the division. If the applicant or any person interested with the applicant, either directly or indirectly, in the business for which the permit is sought shall be such a person as is within the definition of persons to whom a ~~distributing agent, wholesale dealer, or exporter~~ permit shall be denied, then the application may be denied by the division. If the applicant is a partnership, all members of the partnership are required to file said fingerprints, or if a corporation, all principal officers of the corporation are required to file said fingerprints. The cigarette permit for a manufacturer, importer, distributing agent, wholesale dealer, or exporter shall be originally issued at a fee of \$100, which sum is to cover the cost of the investigation required before issuing such permit.

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

(g) Permittees, by acceptance of their permits, agree that their places of business or vehicles transporting cigarettes shall always be subject to be inspected and searched without a search warrant for the purpose of ascertaining that all provisions of this part are complied with by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or during any other time such premises are occupied by the permittee or other persons. Retail cigarette dealers and manufacturers' representatives, by dealing in cigarettes, agree that their places of business or vehicles transporting cigarettes shall always be subject to inspection and search without a search warrant for the purpose of ascertaining that all provisions of this part are complied with by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times when the premises are occupied by the retail dealer or manufacturers' representatives or other persons.

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

Section 9. Section 210.16, Florida Statutes, is amended to read:

210.16 Revocation or suspension of permit.—

(1) The Division of Alcoholic Beverages and Tobacco is given full power and authority to revoke the permit of any person wholesale dealer receiving a permit to engage in business under this part or chapter 569 for violation of any of the provisions of this part or chapter 569.

(2) The division shall revoke the permit or permits of any person who would be ineligible to obtain a new license or renew a license by reason of any of the conditions for permitting provided in s. 210.15(1)(c)1.-6.

~~(3)(2) The division may suspend for a reasonable period of time or revoke, in its discretion, the permits of wholesale dealers issued under the provisions of this part or chapter 569 to any person who has violated any other provision of this part or chapter 569 for the same causes and under the same limitations as is authorized hereunder to revoke the permits of such wholesale dealers.~~

~~(4)(3) No person wholesale dealer whose permit for any place of business has been revoked shall engage in business under this part or chapter 569 at such place of business after such revocation until a new permit is issued. No person wholesale dealer whose permit for any place of business has been revoked shall be permitted to have said permit renewed, or to obtain an additional cigarette permit for any other place of business, for a period of 2 years 6 months after the date such revocation becomes final.~~

~~(5)(4) In addition to lieu of the suspension or revocation of permits, the division may impose civil penalties against holders of permits for violations of this part or rules and regulations relating thereto. No civil penalty so imposed shall exceed \$2,500 \$1,000 for each offense, and all amounts collected shall be deposited with the Chief Financial Officer to the credit of the General Revenue Fund. If the holder of the permit fails to pay the civil penalty, his or her permit shall be suspended for such period of time as the division may specify.~~

Section 10. Subsections (2), (3), and (7) of section 210.18, Florida Statutes, are amended, and subsections (9) and (10) are added to said section, to read:

210.18 Penalties for tax evasion; reports by sheriffs.—

~~(2) Except as otherwise provided in this section, any person wholesale or retail dealer who fails, neglects, or refuses to comply with, or violates the provisions of, this part or the rules adopted and regulations promulgated by the division under this part commits is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person wholesale or retail dealer who has been convicted of a violation of any provision of the cigarette tax law and who is thereafter convicted of a further violation of the cigarette tax law is, upon conviction of such further offense, guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

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

(7) Any sheriff, deputy sheriff, ~~or~~ police officer, ~~or state law enforcement officer~~, upon the seizure of any unstamped cigarettes under this section, shall promptly report such seizure to the division or its representative, together with a description of all such unstamped cigarettes seized, so that the state may be kept informed as to the size and magnitude of the illicit cigarette business. The division shall keep records showing the number of seizures and seized cigarettes reported to, or seized by, the division.

(9) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by any person or by a manufacturer, importer, distributing agent, wholesale dealer, or retail dealer shall result in the seizure of the product and related machinery by the division or any law enforcement agency.

(10) It is unlawful to sell or possess with the intent to sell counterfeit cigarettes, as defined in s. 210.01(22).

(a) A person who does not hold a permit or holds a retail permit under the provisions of this chapter and who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to the imposition of fines and additional penalties as follows:

1. If the quantity of counterfeit cigarettes sold or possessed with the intent to sell is less than two cartons or the equivalent, the fine for a first violation shall not exceed \$1,000 or five times the retail value of the counterfeit cigarettes, whichever is greater. A subsequent violation may result in the imposition of a fine not to exceed \$5,000 or five times the retail value of the counterfeit cigarettes, whichever is greater, and shall result in revocation of the retail permit by the division.

2. If the quantity of counterfeit cigarettes sold or possessed with the intent to sell is two cartons or more or the equivalent, the fine for a first violation shall not exceed \$2,000 or five times the retail value of the counterfeit cigarettes, whichever is greater. A subsequent violation may result in the imposition of a fine not to exceed \$50,000 or five times the retail value of the counterfeit cigarettes, whichever is greater, and shall result in revocation of the retail permit by the division.

(b) A person who holds a permit, other than a retail permit, under the provisions of this chapter and who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.

775.084, and is subject to the imposition of fines and additional penalties as follows:

1. If the quantity of counterfeit cigarettes sold or possessed with the intent to sell is less than 10 cartons or the equivalent, the fine for a first violation shall not exceed \$1,000 or five times the retail value of the counterfeit cigarettes, whichever is greater. A subsequent violation may result in the imposition of a fine not to exceed \$5,000 or five times the retail value of the counterfeit cigarettes, whichever is greater, and shall result in revocation of the permit by the division.

2. If the quantity of counterfeit cigarettes sold or possessed with the intent to sell is 10 cartons or more or the equivalent, the fine for a first violation shall not exceed \$2,000 or five times the retail value of the counterfeit cigarettes, whichever is greater. A subsequent violation may result in the imposition of a fine not to exceed \$5,000 or five times the retail value of the counterfeit cigarettes, whichever is greater, and shall result in revocation of the permit by the division.

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

Section 11. Section 210.181, Florida Statutes, is created to read:

210.181 Civil penalties.—

(1) Except as provided in s. 210.16(5), whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon him or her by this part, or to do or cause to be done any of the things required by this part, or does anything prohibited by this part shall, in addition to any other penalty provided in this part, be liable for a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater.

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

Section 12. For the purpose of incorporating the amendment to section 210.18, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is reenacted to read:

772.102 Definitions.—As used in this chapter, the term:

(1) “Criminal activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

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

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.
4. Part IV of chapter 501, relating to telemarketing.
5. Chapter 517, relating to securities transactions.
6. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
7. Chapter 550, relating to jai alai frontons.
8. Chapter 552, relating to the manufacture, distribution, and use of explosives.
9. Chapter 562, relating to beverage law enforcement.
10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
11. Chapter 687, relating to interest and usurious practices.
12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.
13. Chapter 782, relating to homicide.
14. Chapter 784, relating to assault and battery.
15. Chapter 787, relating to kidnapping.
16. Chapter 790, relating to weapons and firearms.
17. Section 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
18. Chapter 806, relating to arson.
19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
20. Chapter 812, relating to theft, robbery, and related crimes.
21. Chapter 815, relating to computer-related crimes.
22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
23. Section 827.071, relating to commercial sexual exploitation of children.
24. Chapter 831, relating to forgery and counterfeiting.
25. Chapter 832, relating to issuance of worthless checks and drafts.

26. Section 836.05, relating to extortion.
27. Chapter 837, relating to perjury.
28. Chapter 838, relating to bribery and misuse of public office.
29. Chapter 843, relating to obstruction of justice.
30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
32. Chapter 893, relating to drug abuse prevention and control.
33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.
34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 13. For the purpose of incorporating the amendment to section 210.18, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is reenacted to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

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

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 403.727(3)(b), relating to environmental control.
3. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
4. Section 414.39, relating to public assistance fraud.
5. Section 440.105 or s. 440.106, relating to workers’ compensation.
6. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
7. Sections 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs.
8. Part IV of chapter 501, relating to telemarketing.
9. Chapter 517, relating to sale of securities and investor protection.

10. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
11. Chapter 550, relating to jai alai frontons.
12. Chapter 552, relating to the manufacture, distribution, and use of explosives.
13. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
14. Chapter 562, relating to beverage law enforcement.
15. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
16. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
17. Chapter 687, relating to interest and usurious practices.
18. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.
19. Chapter 782, relating to homicide.
20. Chapter 784, relating to assault and battery.
21. Chapter 787, relating to kidnapping.
22. Chapter 790, relating to weapons and firearms.
23. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.
24. Chapter 806, relating to arson.
25. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
26. Chapter 812, relating to theft, robbery, and related crimes.
27. Chapter 815, relating to computer-related crimes.
28. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
29. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
30. Section 827.071, relating to commercial sexual exploitation of children.

31. Chapter 831, relating to forgery and counterfeiting.
32. Chapter 832, relating to issuance of worthless checks and drafts.
33. Section 836.05, relating to extortion.
34. Chapter 837, relating to perjury.
35. Chapter 838, relating to bribery and misuse of public office.
36. Chapter 843, relating to obstruction of justice.
37. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
38. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
39. Chapter 874, relating to criminal street gangs.
40. Chapter 893, relating to drug abuse prevention and control.
41. Chapter 896, relating to offenses related to financial transactions.
42. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.
43. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 14. This act shall take effect October 1, 2005.

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.