

Committee Substitute for
Committee Substitute for Senate Bill No. 1840

An act relating to protecting Florida's health through a surcharge on tobacco products; providing a short title; amending s. 210.01, F.S.; redefining the terms "unstamped package," "unstamped cigarettes," and "stamp"; conforming provisions to changes made by the act; creating s. 210.011, F.S.; levying a surcharge on cigarettes equivalent to \$1 per standard pack; establishing surcharge amounts for cigarettes of a nonstandard size and in varying quantities; providing legislative intent that the surcharge be uniform throughout the state; providing for the surcharge to be administered in the same manner as the cigarette tax imposed under s. 210.02, F.S.; requiring that revenue from the surcharge be deposited into the Health Care Trust Fund within the Agency for Health Care Administration; amending s. 210.04, F.S., to conform; creating s. 210.095, F.S.; defining terms; providing that certain transactions constitute a delivery sale of tobacco products; requiring that a cigarette retailer obtain a license before accepting an order for a delivery sale; prohibiting the making of a delivery sale to a person who is not an adult; requiring that a person accepting an order for a delivery sale comply with certain requirements; prohibiting the mailing, shipping, or delivery of tobacco products in connection with an order for delivery sale unless, before the first delivery to a consumer, the person accepting the order takes certain actions; authorizing a person accepting an order for delivery sale to request that a consumer provide an e-mail address; requiring the delivery of a notice to consumers making orders for delivery sale; providing requirements for such notice; requiring that each person who mails, ships, or delivers tobacco products in connection with an order for delivery sale fulfill specified requirements; requiring that a person file a statement containing certain information with the Department of Business and Professional Regulation before selling or shipping tobacco products; requiring that certain individuals file certain information with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation at specified intervals; providing that a person may comply with certain provisions of state law by complying with specified provisions of federal law; providing for applicability of certain provisions of state law; requiring the collection and remittance of certain taxes; providing penalties for certain violations of state law; classifying certain property as contraband material; requiring the forfeiture of tobacco products under certain circumstances; authorizing the Attorney General, his or her designee, a state attorney, or any person holding a specified type of permit to bring certain actions in a court of this state; amending s. 210.18, F.S.; creating a reward program for information concerning violations under part I of ch. 210, F.S.; creating s. 210.276, F.S.; levying a surcharge on tobacco products other than cigarettes; providing for the surcharge to be administered in the same manner as the tax

imposed under part II of ch. 210, F.S.; requiring that revenue from the surcharge be deposited into the Health Care Trust Fund within the Agency for Health Care Administration; providing for the surcharges on cigarettes and other tobacco products to be levied upon existing inventory on the effective date of the act; requiring each manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, and retailer to take an inventory of the cigarettes and other tobacco products in its possession on the effective date of the act; requiring that the amount of inventory be certified to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation by a specified date; specifying criteria that a retailer must use to calculate the tax on inventory of certain tobacco products; authorizing the surcharge to be paid in four equal installments; providing for penalties and interest for delinquent payments; authorizing a collection allowance for conducting the inventory and remitting the tax on inventory of certain tobacco products; amending s. 210.05, F.S.; conforming provisions to changes made by the act; creating s. 210.1801, F.S.; providing that certain members of an Indian tribe recognized in this state are exempt from paying a cigarette tax and surcharge under certain conditions; providing that cigarettes sold on an Indian reservation to a nontribal member are subject to the tax and surcharge; providing that evidence of such tax and surcharge is indicated by an affixed cigarette tax and surcharge stamp; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to provide Indian-tax-and-surcharge-exemption coupons; requiring a reservation cigarette seller to present these coupons to a wholesale dealer in order to purchase stamped cigarettes that are exempt from the tax and surcharge; authorizing tribal members to purchase stamped cigarettes that are exempt from the tax and surcharge from reservation cigarette sellers; authorizing the governing bodies of Indian tribes to be provided with Indian-tax-and-surcharge-exemption coupons; authorizing Indian tribes and reservation cigarette sellers to redeem Indian-tax-and-surcharge-exemption coupons; providing for the calculation of the number of Indian-tax-and-surcharge-exemption coupons to be provided; requiring wholesale dealers to keep records of transactions involving Indian-tax-and-surcharge-exemption coupons and to submit documentation to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; providing criteria for the documentation; authorizing an Indian tribe, a tribal member, and a reservation cigarette seller to purchase cigarettes that are exempt from the tax and surcharge from a wholesale dealer under certain conditions; prohibiting a wholesaler from collecting the cigarette tax when given Indian-tax-and-surcharge-exemption coupons; authorizing a wholesale dealer to file a claim for a refund with respect to a cigarette tax and surcharge previously paid; providing that an approved agreement between an Indian tribe and the state takes precedence over s. 210.1801, F.S.; requiring that the agreement provide for revenue sharing between the tribe and the state; providing an effective date.

WHEREAS, the United States Surgeon General has found that smoking causes lung cancer, heart disease, and emphysema, and

WHEREAS, the United States Surgeon General has found that smoking by pregnant women may result in fetal injury, premature birth, and low birth weight, and

WHEREAS, the United States Surgeon General has found that tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers, and

WHEREAS, the United States Surgeon General has found that smokeless tobacco may cause gum disease, tooth loss, and mouth cancer, and

WHEREAS, the United States Surgeon General has found that exposure to secondhand smoke causes respiratory symptoms in children and slows their lung growth, and causes sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children, and

WHEREAS, health care costs attributable to smoking-related illness in Florida have been estimated to exceed \$6 billion annually, and

WHEREAS, the direct Medicaid costs attributable to tobacco-related illness in Florida have been estimated to exceed \$1.25 billion each year, and

WHEREAS, the Legislature finds that the cost of tobacco usage should be recouped from those persons who engage in the use of tobacco products through a surcharge upon the retail purchase of cigarettes and other tobacco products, and

WHEREAS, the Legislature finds that the imposition of such a surcharge will provide tax relief to Florida residents and businesses that heretofore have been subject to exactions to pay for the Medicaid costs attributable to the use of tobacco products, NOW, THEREFORE,

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

Section 1. This act may be cited as the “Protecting Florida’s Health Act.”

Section 2. Subsections (18) and (19) of section 210.01, Florida Statutes, are amended to read:

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

(18) “Unstamped package” or “unstamped cigarettes” means a package on which the surcharge and tax required by this part have ~~has~~ not been paid, regardless of whether or not such package is stamped or marked with the indicia of any other taxing authority, or a package on which there has been affixed a counterfeit or fraudulent indicium or stamp.

(19) “Stamp” or “stamps” means the indicia required to be placed on cigarette packages which ~~that~~ evidence payment of the surcharge on cigarettes under s. 210.011 and the tax on cigarettes under s. 210.02.

Section 3. Section 210.011, Florida Statutes, is created to read:

210.011 Cigarette surcharge levied; collection.—

(1) A surcharge, in addition to all other taxes of every kind levied by law, is levied upon the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state, in the following amounts, except as otherwise provided in subsections (2)-(5), for cigarettes of standard dimensions:

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

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

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

(2) The descriptions of cigarettes contained in subsection (1) are declared to be standard as to dimensions for the purpose of levying a surcharge as provided in this section. If any cigarette is received, purchased, possessed, sold, offered for sale, given away, or used which is of a size other than those standard dimensions, the cigarette is subject to a surcharge at the rate of 4.2 cents on each cigarette.

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

(a) Packages containing 10 cigarettes or fewer require a surcharge of 50 cents.

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

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

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

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

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

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

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

(6) This surcharge shall be paid by the dealer to the division for deposit and distribution as hereinafter provided upon the first sale or transaction within the state, whether such sale or transfer is to the ultimate purchaser or consumer. The seller or dealer shall collect the surcharge from the purchaser or consumer, and the purchaser or consumer shall pay the surcharge to the seller. The seller or dealer is responsible for the collection of the surcharge and payment of the surcharge to the division. All surcharges are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the rate of 1 percent per month. If the amount of surcharge due for a given period is assessed without allocating it to any particular month, the interest begins accruing on the date of the assessment. Whenever cigarettes are shipped from outside the state to anyone other than a distributing agent or wholesale dealer, the person receiving the cigarettes is responsible for the surcharge on the cigarettes and payment of the surcharge to the division.

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

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

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

Section 4. Subsection (9) of section 210.04, Florida Statutes, is amended to read:

210.04 Construction; exemptions; collection.—

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

Section 5. Section 210.095, Florida Statutes, is created to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(1) For purposes of this section, the term:

(a) “Adult” means an individual who is at least of the legal minimum purchase age for tobacco products.

(b) “Consumer” means a person in this state who comes into possession of any tobacco product subject to the tax imposed by this chapter and who, at the time of possession, is not a distributor intending to sell or distribute the tobacco product, a retailer, or a wholesaler.

(c) “Delivery sale” means any sale of tobacco products to a consumer in this state for which:

1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The tobacco products are delivered by use of mail or a delivery service.

(d) “Delivery service” means any person engaged in the commercial delivery of letters, packages, or other containers.

(e) “Legal minimum purchase age” means the minimum age at which an individual may legally purchase tobacco products in this state.

(f) “Mail” or “mailing” means the shipment of tobacco products through the United States Postal Service.

(g) “Retailer” means any person who is not a licensed distributor but who is in possession of tobacco products subject to tax under this chapter for the purposes of selling the tobacco products to consumers.

(h) “Shipping container” means a container in which tobacco products are shipped in connection with a delivery sale.

(i) “Shipping document” means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(j) “Tobacco products” means all cigarettes, smoking tobacco, snuff, fine-cut chewing tobacco, cut and granulated tobacco, cavendish, and plug or twist tobacco.

(2)(a) A sale of tobacco products constituting a delivery sale pursuant to paragraph (1)(c) is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state.

(b) A retailer must obtain a license from the division pursuant to the requirements of this chapter before accepting an order for a delivery sale.

(c) A person may not make a delivery sale of tobacco products to any individual who is not an adult.

(d) Each person accepting an order for a delivery sale must comply with each of the following:

1. The age-verification requirements set forth in subsection (3).
2. The disclosure requirements set forth in subsection (4).
3. The shipping requirements set forth in subsection (5).
4. The registration and reporting requirements set forth in subsection (6).
5. The tax collection requirements set forth in subsection (7).
6. The licensing and tax stamp requirements set forth in this chapter which apply to sales of tobacco products occurring entirely in this state.
7. All laws of this state generally applicable to sales of tobacco products occurring entirely in this state which impose excise taxes and assessments.

(3) A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the individual submitting the order a certification that includes:

1. Reliable confirmation that the individual is an adult; and
2. A statement signed by the individual in writing and under penalty of perjury which:

- a. Certifies the address and date of birth of the individual; and
- b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:

- (I) Signing another individual's name to the certification;
- (II) Selling tobacco products to individuals under the legal minimum purchase age; and
- (III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.

(b) Makes a good faith effort to verify the information contained in the certification provided by the individual pursuant to paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

(c) Provides to the individual, via electronic mail or other means, a notice meeting the requirements of subsection (4).

(d) If an order for tobacco products is made pursuant to an advertisement on the Internet, receives payment for the delivery sale from the consumer

by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.

(e) Imposes a two-carton minimum on each order of cigarettes, and requires payment for the purchase of any tobacco product to be made by personal or company check of the purchaser or the purchaser's credit card or debit card. Payment by money order or cash may not be received or permitted. The person accepting the order for delivery sale shall submit, to each credit-card acquiring company with which the person has credit-card sales, identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.

(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:

(a) Illegal if made to individuals who are not adults.

(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).

(c) Taxable under this chapter.

The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

(c) Provide to the delivery service, if such service is used, evidence of full compliance with subsection (7).

If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(6)(a) Before making sales or shipping tobacco products in connection with sales, a person shall file with the division a statement providing the person's name, trade name, and the address of the person's principal place of business, as well as any other place of business.

(b) No later than the 10th day of each month, each person who has made a sale or mailed, shipped, or otherwise delivered tobacco products in connection with any sale during the previous calendar month shall file with the division a memorandum or a copy of the invoice, providing for each sale:

1. The name and address of the individual who submitted the order for the sale.

2. The name and address of the individual who accepted delivery of the tobacco products.

3. The name and address of the person who accepted the order for the sale of the tobacco products.

4. The name and address of the delivery service and the name of the individual making the delivery.

5. The brand or brands of the tobacco products sold in the sale.

6. The quantity of each brand of tobacco products sold in the sale.

(c) A person may comply with the requirements of this subsection by complying with the requirements of 15 U.S.C. s. 376.

(d) This section does not apply to sales of tobacco products by a licensed distributor or to sales of tobacco products by a retailer purchased from a licensed distributor.

(7) Each person accepting a purchase order for a delivery sale shall collect and remit to the division all taxes imposed on tobacco products by this state with respect to the delivery sale. With respect to cigarettes, the collection and remission are not required if the person has obtained proof in the form of the presence of applicable tax stamps or tax-exempt stamps, or other proof that the taxes have already been paid to this state.

(8)(a) Except as otherwise provided in this section, a violation of this section by a person other than an individual who is not an adult is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and:

1. For a first violation of this section, the person shall be fined \$1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined \$5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(b) A person who is an adult and knowingly submits a false certification under subsection (3) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(c) A person who fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved.

(d) Any tobacco products sold or attempted to be sold in a delivery sale not meeting the requirements of this section shall be forfeited to the state pursuant to s. 210.185.

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(f) Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article within the definition of s. 932.701(2)(a)3.

(g) An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Attorney General, the Attorney General's designee, a state attorney, or any person who holds a permit under 26 U.S.C. s. 5713 may bring an action in the appropriate court in this state to prevent or restrain violations of this section by any person.

Section 6. Subsection (6) of section 210.18, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

210.18 Penalties for tax evasion; reports by sheriffs.—

~~(6)(a) Every person, firm, or corporation, other than a licensee under the provisions of this part, who possesses, removes, deposits, or conceals, or aids~~

~~in the possessing, removing, depositing, or concealing of, any unstamped cigarettes not in excess of 50 cartons is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In lieu of the penalties provided in those sections, however, the person, firm, or corporation may pay the tax plus a penalty equal to the amount of the tax authorized under s. 210.02 on the unstamped cigarettes.~~

~~(a)(b)~~ Every person, firm, or corporation, other than a licensee under the provisions of this part, who possesses, removes, deposits, or conceals, or aids in the possessing, removing, depositing, or concealing of, any unstamped cigarettes ~~in excess of 50 cartons~~ is presumed to have knowledge that they have not been taxed and ~~commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(11) The division shall create a toll-free number for reporting violations of this part. Upon a determination that a violation has occurred, the informant who provided the information that led to the determination shall be paid a reward of up to 50 percent of the fine levied and paid under this section. A notice must be conspicuously displayed in every location where cigarettes are sold which contains the following provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW PROHIBITS THE POSSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD." This notice must be provided at the expense of the retail dealer.

Section 7. Section 210.276, Florida Statutes, is created to read:

210.276 Surcharge on tobacco products.—

(1) A surcharge is levied upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products at the rate of 60 percent of the wholesale sales price. The surcharge shall be levied at the time the distributor:

(a) Brings or causes to be brought into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state, to be sold by those retailers. A surcharge may not be levied on tobacco products shipped or transported outside this state for sale or use outside this state.

(2) A surcharge is imposed upon the use or storage by consumers of tobacco products in this state and upon such consumers at the rate of 60 percent of the wholesale sales price. The surcharge imposed by this subsection does not apply if the surcharge imposed by subsection (1) on such tobacco products has been paid. This surcharge does not apply to the use or storage of tobacco products in quantities of less than 1 pound in the possession of any one consumer.

(3) Any tobacco product with respect to which a surcharge has once been imposed under this section is not again subject to surcharge under this section.

(4) No surcharge shall be imposed by this section upon tobacco products not within the taxing power of the state under the Commerce Clause of the United States Constitution.

(5) The exemptions provided for cigarettes under s. 210.04(4) also apply to tobacco products subject to a surcharge under this section.

(6) The surcharge levied under this section shall be administered, collected, and enforced in the same manner as the tax imposed under s. 210.30.

(7) Revenue produced from the surcharge levied under this section shall be deposited into the Health Care Trust Fund within the Agency for Health Care Administration.

Section 8. (1) The additional surcharges imposed by ss. 210.011 and 210.276, Florida Statutes, are levied upon existing inventory on July 1, 2009. On July 1, 2009, each manufacturer, distributing agent, wholesale dealer, retail dealer, as defined in s. 210.01, Florida Statutes, and manufacturer, distributor, and retailer, as defined in s. 210.25, Florida Statutes, in the state shall take an inventory of the cigarettes and other tobacco products in its possession before opening for business. The amount of inventory shall be certified to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation on or before July 21, 2009, and shall include documentation accompanied by certified check, money order, or an electronic funds transfer for the amount of the additional surcharge due on the inventory. For the purpose of calculating the tax due by a retailer on the inventory of tobacco products other than cigarettes under s. 210.276, Florida Statutes, the wholesale sales price shall equal 75 percent of the price paid by the retailer to a distributor or manufacturer. The manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, or retailer may pay the surcharge in four equal installments of 25 percent of the total amount due. If the manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, or retailer chooses to pay in installments, it must pay the first installment by July 21, 2009, along with the required documentation; the second installment by August 10, 2009; the third installment by August 30, 2009; and the fourth installment by September 9, 2009. Chapter 210, Florida Statutes, relating to penalties and interest for delinquent payments, applies to this section. The proceeds of the additional surcharge on the existing inventory shall be deposited into the Health Care Trust Fund within the Agency for Health Care Administration.

(2) For the purpose of compensating each manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, and retailer for taking an inventory of the cigarettes and other tobacco products in its possession and remitting the surcharge levied on these products, each manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, and retailer may deduct 5 percent of the amount of the surcharge due and certified and remitted to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation as a collection allowance.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the required documentation or surcharge is delinquent at the time of payment.

(b) The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may deny the collection allowance if a manufacturer, distributing agent, wholesale dealer, retail dealer, distributor, or retailer of products files incomplete documentation. For the purposes of the surcharge on inventory, a return is incomplete if it is lacking the information necessary to ascertain the surcharge due.

Section 9. Subsection (5) of section 210.05, Florida Statutes, is amended to read:

210.05 Preparation and sale of stamps; discount.—

(5) Cigarettes sold to the Seminole Indian Tribe of Florida shall be administered as provided in s. 210.1801. Agents or wholesale dealers may sell stamped but untaxed cigarettes to the Seminole Indian Tribe, or to members thereof, for retail sale. Agents or wholesale dealers shall treat such cigarettes and the sale thereof in the same manner, with respect to reporting and stamping, as other sales under this part, but agents or wholesale dealers shall not collect from the purchaser the tax imposed by s. 210.02. The purchaser hereunder shall be responsible to the agent or wholesale dealer for the services and expenses incurred in affixing the stamps and accounting therefor.

Section 10. Section 210.1801, Florida Statutes, is created to read:

210.1801 Exempt cigarettes for members of recognized Indian tribes.—

(1) Notwithstanding any provision of this chapter to the contrary, a member of an Indian tribe recognized in this state who purchases cigarettes on an Indian reservation for his or her own use is exempt from paying a cigarette tax and surcharge. However, such member purchasing cigarettes outside of Indian reservation or a nontribal member purchasing cigarettes on an Indian reservation is not exempt from paying the cigarette tax or surcharge when purchasing cigarettes within this state. Accordingly, the tax and surcharge shall apply to all cigarettes sold on an Indian reservation to a nontribal member, and evidence of such tax or surcharge shall be by means of an affixed cigarette tax and surcharge stamp.

(2) In order to ensure an adequate quantity of cigarettes on Indian reservations which may be purchased by tribal members who are exempt from

the cigarette tax and surcharge, the division shall provide recognized Indian tribes within this state with Indian-tax-and-surcharge-exemption coupons as set forth in this section. A reservation cigarette seller shall present such Indian-tax-and-surcharge-exemption coupons to a wholesale dealer licensed in this state in order to purchase stamped cigarettes that are exempt from the imposition of the cigarette tax and surcharge. A tribal member may purchase cigarettes that are exempt from the cigarette tax and surcharge from a reservation cigarette seller even though such cigarettes have an affixed cigarette tax-and-surcharge stamp.

(3) Indian-tax-and-surcharge-exemption coupons shall be provided to the recognized governing body of each Indian tribe to ensure that each Indian tribe can obtain cigarettes that are exempt from the tax and surcharge which are for the use of the tribe or its members. The Indian-tax-and-surcharge-exemption coupons shall be provided to the Indian tribes quarterly. It is intended that each Indian tribe will distribute the Indian-tax-and-surcharge-exemption coupons to reservation cigarette sellers on such tribe's reservation. Only Indian tribes or reservation cigarette sellers on their reservations may redeem such Indian-tax-and-surcharge-exemption coupons pursuant to this section.

(a) The number of Indian-tax-and-surcharge-exemption coupons to be given to the recognized governing body of each Indian tribe shall be based upon the probable demand of the tribal members on the tribe's reservation plus the number needed for official tribal use. The annual total number of Indian-tax-and-surcharge-exemption coupons to be given to the recognized governing body of each Indian tribe shall be calculated by multiplying the number of members of the tribe times five packs of cigarettes times 365.

(b) Each wholesale dealer shall keep records of transactions involving Indian-tax-and surcharge-exemption coupons and shall submit appropriate documentation to the division when claiming a refund as set forth in this section. Documentation must contain at least the following information:

1. The identity of the Indian tribe from which an Indian-tax-and-surcharge-exemption coupon is received;
2. The identity and the quantity of the product for which an Indian-tax-and-surcharge-exemption coupon is provided;
3. The date of issuance and the date of expiration of the Indian-tax-and-surcharge-exemption coupon; and
4. Any other information as the division may deem appropriate.

(4)(a) An Indian tribe may purchase cigarettes for its own official use from a wholesale dealer without payment of the cigarette tax and surcharge to the extent that the Indian tribe provides the wholesale dealer with Indian-tax-and-surcharge-exemption coupons entitling the Indian tribe to purchase such quantities of cigarettes as allowed by each Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge.

(b) A tribal member may purchase cigarettes for his or her own use without payment of the cigarette tax and surcharge if the tribal member makes such purchase on a qualified reservation.

(c) A reservation cigarette seller may purchase cigarettes for resale without payment of the cigarette tax from a wholesale dealer licensed pursuant to this chapter:

1. If the reservation cigarette seller brings the cigarettes or causes them to be delivered onto a qualified reservation for resale on the reservation;

2. To the extent that the reservation cigarette seller provides the wholesale dealer with Indian-tax-and-surcharge-exemption coupons entitling the reservation cigarette seller to purchase such quantities of cigarettes as allowed on each Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge; and

3. If the cigarettes are affixed with a cigarette tax and surcharge stamp.

(d) A wholesale dealer may not collect the cigarette tax and surcharge from any purchaser if the purchaser gives the dealer Indian-tax-and-surcharge-exemption coupons that entitle the purchaser to purchase such quantities of cigarettes as allowed on each such Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge.

(5) A wholesale dealer who has one or more Indian-tax-and-surcharge-exemption coupons may file a claim for a refund with respect to any cigarette tax previously paid on cigarettes that the wholesale dealer sold without collecting the tax because the dealer accepted an Indian-tax-and-surcharge-exemption coupon from a purchaser pursuant to this section.

(6) If an Indian tribe enters into an agreement with the state and the Legislature approves such agreement regarding the sale and distribution of cigarettes on the tribe's reservation, the terms of the agreement take precedence over the provisions of this section and exempt the tribe from the tax and surcharge if the tax and surcharge are specifically addressed in the agreement. The sale or distribution, including transportation, of any cigarettes to the tribe's reservation shall be in accordance with the provisions of the agreement. The agreement must provide for revenue sharing between the tribe and the state relating to the imposition and collection of the taxes imposed by ss. 210.02 and 210.30 and the surcharges imposed by ss. 210.011 and 210.276 and must, at a minimum, provide for the state to receive as revenue sharing from the tribe the full amounts of the surcharges imposed by ss. 210.011 and 210.276.

Section 11. This act shall take effect July 1, 2009.

Approved by the Governor May 27, 2009.

Filed in Office Secretary of State May 27, 2009.