

## CHAPTER 2012-208

### House Bill No. 693

An act relating to the Department of Business and Professional Regulation; amending s. 210.01, F.S.; redefining the term “agent” as it relates to the cigarette tax, to conform to changes made by the act; amending s. 210.05, F.S.; deleting a provision that allows the cigarette tax to be paid by affixing a stamp insignia through a metering machine; amending s. 210.07, F.S.; deleting provisions authorizing the use of metering machines; requiring retail dealers of cigarettes, rather than wholesale dealers, to affix to each such machine, in a conspicuous place, an identification sticker furnished by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation; amending ss. 210.11 and 210.12, F.S.; conforming provisions to changes made by the act; amending s. 210.15, F.S.; deleting a provision that prohibited the division from approving the use of meter machines to evidence the payment of the taxes on cigarettes except to qualified wholesale dealers; amending s. 210.18, F.S.; conforming provisions regarding penalties relating to the use of metering machines; amending s. 455.271, F.S.; deleting a provision that provides that a licensee of the department who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status; amending s. 475.02, F.S.; conforming a provision to changes made by the act; amending s. 475.180, F.S.; deleting a provision that requires an applicant for a real estate license who is not a resident of this state to file an irrevocable consent regarding lawsuits and actions commenced against the applicant; deleting provisions prescribing the method of service of process; amending s. 475.451, F.S.; deleting the requirement that an applicant to be chief administrator of a proprietary real estate school or state institution meet certain qualifications for licensure as a broker associate or sales associate and other minimal requirements; deleting the definition of the term “chief administrative person” as it relates to schools teaching real estate practice; repealing s. 475.6235(7), F.S., relating to a nonresidential applicant’s requirement to file an irrevocable consent regarding lawsuits and actions against an appraisal management company; amending s. 475.631, F.S.; deleting the provision that requires an applicant for licensure as an appraiser who is not a resident of this state to file an irrevocable consent regarding lawsuits and actions commenced against the applicant; deleting the method of service of process; repealing s. 476.124, F.S., relating to certain application requirements for licensing examinations in barbering; amending s. 561.23, F.S.; deleting the requirement that licenses issued under the Beverage Law be issued in duplicate; amending s. 565.07, F.S.; allowing certain high-proof distilled spirits to be distilled, bottled, packaged, or processed for export or sale outside this state; providing an effective date.

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

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

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

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

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

210.05 Preparation and sale of stamps; discount.—

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

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

210.07 Metering Machines.—

~~(1)(a) The tax may also be paid through the use of cigarette tax stamp insignia to be applied by the use of metering machines. The division shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such cigarette taxes through the use thereof, requiring adequate surety bonds of the users thereof to assure the proper use of such machines and payment of all cigarette taxes that might come due by the users thereof, and all other rules and regulations necessary and proper to govern the use of same.~~

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

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

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

~~(2)(4) A person may not operate a No vending machine shall be allowed to operate in the state unless that does not have affixed thereto the~~

identification sticker required by this section is affixed to the vending machine. ~~A person may not operate a nor shall any vending machine be allowed to operate in the state which~~ that does not display at all times at least one package of each brand of the packages located therein so the same are clearly visible and arranged in such a manner that the cigarette tax stamps ~~or meter impressions of stamps~~ affixed thereto are clearly visible. ~~A~~ It shall be the duty of any person, firm, or corporation operating a cigarette vending machine in this state must to furnish to the division the location of the vending machine and to report within 30 days to the division any change of location of the vending machine.

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

210.11 Refunds; sales of stamps and payment of tax.—Whenever any cigarettes upon which stamps have been placed, ~~or upon which the tax has been paid by metering machine,~~ have been sold and shipped into another state for sale or use therein, or have become unfit for use and consumption or unsalable, or have been destroyed, the dealer involved shall be entitled to a refund or credit of the actual amount of the tax paid with respect to such cigarettes less any discount allowed by the division in the sale of the stamps ~~or payment of the tax by metering machine,~~ upon receipt of satisfactory evidence of the dealer's right to receive such refund or credit, provided application for refund or credit is made within 9 months after ~~of~~ the date the cigarettes were shipped out of the state, became unfit, or were destroyed. Only the division shall sell, or offer for sale, any stamp or stamps issued under this part. The division may redeem unused stamps lawfully in the possession of any person. The division may prescribe necessary rules ~~and regulations~~ concerning refunds, credits, sales of stamps, and redemptions under the provisions of this part. Appropriation is hereby made out of revenues collected under this part for payment of such allowances.

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

210.12 Seizures; forfeiture proceedings.—

(1) The state, acting by and through the division, may shall be authorized ~~and empowered to seize, confiscate, and forfeit~~ any cigarettes upon which taxes payable hereunder may be unpaid or which ~~that~~ are otherwise held in violation of the requirements of this chapter, and also any vending machine or receptacle in which 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 that~~ 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.

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

210.15 Permits.—

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

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

210.18 Penalties for tax evasion; reports by sheriffs.—

(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 a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

455.271 Inactive and delinquent status.—

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

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

475.02 Florida Real Estate Commission.—

(3) Notwithstanding s. 112.313, any member of the commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, ~~chief administrator permit~~, school instructor permit, or any combination of such permits issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

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

## 475.180 Nonresident licenses.—

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

~~(a)(b)~~ Any resident licensee who becomes a nonresident shall, within 60 days, notify the commission of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.25.

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

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

## 475.451 Schools teaching real estate practice.—

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

(a) “School permitholder” means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor’s examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching.

~~(b) “Chief administrative person” means the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. A chief administrative person must also meet the requirements of a school instructor if actively engaged in teaching.~~

~~(b)(e)~~ “School instructor” means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or

community college or courses in a career center or proprietary real estate school.

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

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

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

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

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

3. The department shall renew an instructor permit upon receipt of a renewal application and fee. The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. Any permit ~~that which~~ is not renewed at the end of the permit period established by the department ~~shall~~ automatically reverts ~~revert~~ to involuntarily inactive status.

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

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

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

475.631 Nonresident licenses and certifications.—

~~(2)(a) An applicant who is not a resident of this state shall file an irrevocable consent that suits and actions may be commenced against her or him in any county of this state in which a plaintiff having a cause of action or suit against her or him resides and that service of any process or pleading in~~

suits or actions against her or him may be made by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested, and also to the certified appraiser or licensee by registered mail addressed to the certified appraiser or licensee at her or his designated principal place of business. Service, when so made, must be taken and held in all courts to be as valid and binding upon the certified appraiser or licensee as if made upon her or him in this state within the jurisdiction of the court in which the suit or action is filed. The irrevocable consent must be in a form prescribed by the department and be acknowledged before a notary public.

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

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

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

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

561.23 License issued in duplicate; display.—

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

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

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

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

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

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.