

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

**BILL:** CS/CS/SB 1840

**INTRODUCER:** Policy and Steering Committee on Ways and Means, Finance and Tax Committee and Senator Deutch

**SUBJECT:** Health Care

**DATE:** April 9, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>McKee</u>	<u>FT</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>Kelly</u>	<u>WPSC</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This legislation creates the Protecting Florida’s Health Act. It levies a \$1 per pack surcharge on cigarettes and a \$1 per ounce surcharge on tobacco products other than cigarettes, including cigars. These surcharges are administered, collected, and enforced in the same manner as the existing excise taxes on these products, and the revenue generated by these surcharges is paid into the Health Care Trust Fund. The bill strengthens the enforcement of existing laws relating to cigarette taxes and provides for a reward to be paid to persons who report violations.

The Revenue Estimating Conference has determined that the net additional revenue attributable to the levy of a \$1 surcharge on cigarettes is \$870.0 million in FY 2009-2010 and \$915.4 million in FY 2010-2011. Of this amount, \$30.8 million in FY 2009-2010 and \$32.3 million in FY 2010-2011 are credited to the General Revenue Fund, and \$855.2 million in FY 2009-2010 and \$899.9 million in FY 2010-2011 are credited to the Health Care Trust Fund in the Agency for Health Care Administration. Receipts into the Public Medical Assistance Trust Fund are reduced by approximately \$14.1 million in FY 2009-2010 and \$14.9 million in FY 2010-2011 because of reduced cigarette tax revenues. In addition, the Alcoholic Beverage and Tobacco Trust Fund

loses about \$0.6 million annually, and local government revenues are reduced about \$1.5 million annually.

The surcharge on other tobacco products is expected to generate \$133.0 million in FY 2009-2010 and \$144.8 million in FY 2010-2011. The Health Care Trust Fund is expected to receive \$122.2 million in FY 2009-2010 and \$132.8 million in FY 2010-2011. Revenue deposited into the General Revenue Fund is expected to increase by \$9.6 million in FY 2009-2010 and \$10.6 in FY 2010-2011. Local government revenues should decline by \$1.2 million annually.

This bill substantially amends the sections 210.01, 210.04, 210.05, 210.18, 210.25, Florida Statutes, and creates ss. 210.011, 210.1801, and 210.211, Florida Statutes.

## II. Present Situation:

Tobacco use in Florida has been linked to higher health care costs, lost productivity in the workforce and premature death. Smoking-caused health costs are estimated at \$6.32 billion annually and productivity losses are even higher. The state of Florida bears over \$700 million of the health care costs attributable to smoking through its yearly share of Medicaid and other state health expenditures. Total annual smoking-related Medicaid costs in the state are \$1.25 billion. Nineteen and three-tenths of the adults in Florida smoke and 28,600 adults die every year of smoking-related illnesses. Second-hand smoke kills 2,960 adults every year, and 692,000 children are exposed to secondhand smoke in their homes.

Florida taxes cigarettes and other tobacco products. Cigarettes are taxed in Florida at a rate of 33.9 cents per pack of 20 standard cigarettes, and the rate varies proportionately for non-standard cigarettes or packs. These taxes must be paid by the wholesale dealer at the time of the first sale within the state, and 7.3 percent of total collections is paid to the General Revenue Fund as service charge pursuant to s. 215.20, F.S. Nine-tenths of one percent is paid to the Alcoholic Beverage and Tobacco Trust Fund, and the remaining revenue is distributed:

- (a) 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- (b) 29.3 percent to the Public Medical Assistance Trust Fund;
- (c) 1.47 percent, or \$5.6 million, whichever is greater, to the H. Lee Moffitt Cancer Center (through FY 2015-16); and
- (d) the remainder to the General Revenue Fund.

Other tobacco products except cigars are taxed at 25 percent of their wholesale cost, and the proceeds are paid to the General Revenue Fund.

Total cigarette tax collections for FY 2007-08 were \$411.9 million. The current forecast for FY 2008-09 is \$405.0 million. The tax on other tobacco products generated \$31.8 million in FY 2007-08 and is expected to yield \$30.5 million in FY 2008-09.

Florida began taxing cigarettes in 1943. The tax rate was increased in 1949, 1963, 1971, 1977, 1986, and, most recently in 1990. Other tobacco products were first taxed in 1985. Tobacco products are subject to federal and state taxes, and some states provide for local taxes. The average cigarette tax rate for all states, including the District of Columbia, is \$1.19 per pack,

ranging from 7 cents per pack in South Carolina to \$2.75 per pack in New York. Cigarette tax rates in South Carolina, Mississippi, Missouri, and Virginia are lower than in Florida. Many states have increased cigarette taxes in recent years; Florida, California, Mississippi, Missouri, North Dakota, and South Carolina are the only states that have not raised their cigarette tax rates in the past 10 years. Federal tobacco taxes are being raised on April 1, 2009, to provide additional funding for the Children's Health Insurance Program. The cigarette tax is increasing from 39 cents per pack to \$1.01 per pack, and other tobacco product taxes are increasing by varying amounts.

Cigarette and other tobacco products taxes are administered, collected, and enforced under ch. 210, F.S., by the Department of Business and Professional Regulation. The tax on cigarettes must be paid by the wholesale dealer at the time of the first sale within the state, and it is paid by affixing a stamp to each package of cigarettes. Tax evasion, which is evidenced by possessing fewer than 50 cartons of cigarettes that have not been stamped, is a first degree misdemeanor for the first offense. After one conviction, a subsequent offense is a third degree felony, as is a first conviction for more than 50 cartons. In addition to these penalties, anyone in possession of unstamped cigarettes is liable for the tax imposed on the cigarettes, and anyone who knowingly fails to comply with the legal requirements is subject to a fine of \$1,000 or 5 times the retail value of the product involved, whichever is greater. Creating counterfeit stamps, with intent to defraud the state, is a third degree felony.

### III. Effect of Proposed Changes:

**Section 1** states that this bill may be cited as the "Protecting Florida's Health Act."

**Section 2** amends s. 210.01, F.S., to redefine the terms "unstamped package", "unstamped cigarettes", and "stamp" to include the surcharge as well as the current excise tax.

**Section 3** creates s. 210.011, F.S., to impose a surcharge on the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in Florida. The surcharge imposed on a standard 20-cigarette pack is \$1; and a proportionate surcharge is imposed on other sizes and quantities of cigarettes. The surcharge revenues will be distributed into the Health Care Trust Fund within the Agency for Health Care Administration.

**Section 4** amends s. 210.04, F.S., to provide authority to the department to allow sample packages of cigarettes to be distributed without stamps, as long as the surcharge has been paid.

**Section 5** amends s. 210.18, F.S., to revise the penalties imposed for failing to pay the tax and surcharge on cigarettes. The provision that allows a violator to pay the tax plus a penalty equal to the amount of the tax in lieu of misdemeanor penalties is deleted, and the penalties for first and subsequent violations of possessing unstamped cigarettes or counterfeit cigarettes are increased. A reward for information about cigarette tax violations is provided.

**Section 6** amends s. 210.25, F.S., to make a conforming change.

**Section 7** creates s. 210.211, F.S., to impose a surcharge on the distribution of tobacco products, other than cigarettes, in Florida. The surcharge is levied at the rate of \$1 for each ounce. The

surcharge revenues will be distributed into the Health Care Trust Fund within the Agency for Health Care Administration.

**Section 8** applies the surcharges on tobacco and tobacco products on existing inventory held by manufacturers, distributors, wholesalers and vendors in the state as of July 1, 2009. Each manufacturer, distributor or retailer may elect to pay the surcharge on the inventory in installments, with the last installment due no later than September 9, 2009.

**Section 9** amends s. 210.05, F.S., to provide that cigarettes sold to the Seminole Indian Tribe of Florida are to be administered as provided in s. 210.1801, F.S.

**Section 10** creates s. 210.1801, F.S., to administer the stamping of cigarettes or other tobacco products sold to the Seminole Indian Tribe of Florida and the Miccosukee Tribe of Florida. These cigarettes and other tobacco products will have a stamp affixed indicating the cigarettes as “Indian cigarettes” or the other tobacco products as “Indian tobacco products”. Any nontribal member who possesses Indian cigarettes or Indian tobacco products commits a first degree misdemeanor. The Division of Alcoholic Beverages and Tobacco is directed to conduct a public awareness campaign regarding the penalties for possession of such products by nontribal members. The penalty provisions of this section do not apply to cigarettes and other tobacco products sold to a tribe that has entered into an approved compact with the state which provides for revenue-sharing between the state and the tribe.

**Section 11** appropriates \$50,000 from the Alcoholic Beverage and Tobacco Trust Fund for the public awareness campaign.

**Section 12** provides that the bill is effective July 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

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and \$32.3 million in FY 2010-2011 are credited to the General Revenue Fund, and \$855.2 million in FY 2009-2010 and \$899.9 million in FY 2010-2011 are credited to the Health Care Trust Fund in the Agency for Health Care Administration. Receipts into the Public Medical Assistance Trust Fund are reduced by approximately \$14.1 million in FY 2009-2010 and \$14.9 million in FY 2010-2011 because of reduced cigarette tax revenues. In addition, the Alcoholic Beverage and Tobacco Trust Fund loses about \$0.6 million annually, and local government revenues are reduced about \$1.5 million annually.

The surcharge on other tobacco products is expected to generate \$133.0 million in FY 2009-2010 and \$144.8 million in FY 2010-2011. The Health Care Trust Fund is expected to receive \$122.2 million in FY 2009-2010 and \$132.8 million in FY 2010-2011. Revenue deposited into the General Revenue Fund is expected to increase by \$9.6 million in FY 2009-2010 and \$10.6 million in FY 2010-2011. Local government revenues should decline by \$1.2 million annually.

**B. Private Sector Impact:**

The bill increases the cost of cigarettes and other tobacco products. Some users of these products will likely stop using them, others will switch to untaxed products, either obtained legally from Seminole retailers or illegally from smugglers or out-of-state sources. It is expected that the long run impact of the increased cost would have a greater impact on tobacco consumption in Florida.

**C. Government Sector Impact:**

To the extent that tobacco product consumption decreases, state expenses for Medicaid and other health care programs will decrease. Because fewer taxed cigarettes and other tobacco products will be sold, less revenue will be distributed to the Alcoholic Beverage and Tobacco Trust Fund, the Public Medical Assistance Trust Fund, and County Revenue Sharing.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Policy and Steering Committee on Ways and Means on April 7, 2009:**  
The CS

- Allows manufacturers, distributors and retailers to elect to pay the surcharge on existing inventory in installments, with the last installment due September 9, 2009.
- Provides that the possession of “Indian cigarettes” and “Indian tobacco products” (those not subject to the surcharge) by a nontribal member is a first degree misdemeanor.
- Directs the Division to conduct a public awareness campaign related to the penalties imposed on the possession of Indian products by nontribal members.

**CS by Finance and Tax on March 31, 2009:**

The committee substitute levies a surcharge on cigarettes and other tobacco products. It directs all additional revenue to the Health Care Trust Fund instead of distributing it among various health-related funds. It strengthens enforcement of cigarette tax enforcement and provides a reward for information about sales of unstamped cigarettes.

**B. Amendments:**

None.