

Information Booklet

2005 Changes to Florida's Cigarette Laws



*Effective
October 1, 2005*

State of Florida
Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco

www.MyFlorida.com/dbpr/abt

Changes to the Cigarette Laws of Florida

The 2005 Legislature made changes to the laws governing the sale of cigarettes in Florida. Following is a summary of the changes, additions, and/or guidelines which will be effective October 1, 2005.

- Manufacturers, importers, distributing agents, wholesale dealers, and retail dealers are required to hold a current, valid permit to sell, distribute, or receive cigarettes in the state of Florida.
- The amount of the surety bond, certificate of deposit, or irrevocable letter of credit for surety for the payment of cigarette taxes is revised to 110% of the estimated tax liability for 30 days, but not less than \$2,000.
- Cigarette wholesale dealers as stamping agents are required to remit taxes on cigarettes by certified check or electronic funds transfer only.
- The Division of Alcoholic Beverages and Tobacco must adopt rules governing the payment of taxes by electronic funds transfer.
- The requirement for the affixation of stamps is revised to 10 days, with specific stamping limitations given.
- Requirements with respect to receipt, possession, storage, and transport of unstamped cigarette packages are provided.
- Notice and filing guidelines for persons shipping unstamped cigarette packages are provided.
- Law enforcement officials are authorized to inspect shipping vehicles.
- The state is authorized to claim property and materials from wholesale dealers and retailers who attempt to defraud the state.
- Criteria for permit applications are provided. Guidelines for permit application denial are outlined.
- The issuance, maintenance, or renewal of permits will be prohibited for specified conditions.
- The authority of the Division of Alcoholic Beverages and Tobacco to revoke or suspend permits is revised.
- The group of violators subject to criminal liability is expanded and penalties applied.
- The selling, or possessing with intent to sell, of counterfeit cigarettes is made unlawful.
- The seizure of counterfeit cigarettes and related machinery is provided, and the list of persons required to report seizures of unstamped cigarettes is expanded.
- The destruction of counterfeit cigarettes is required.
- There are specific civil penalties for failure to comply with duties or taxes.

Definitions:

Manufacturer: 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.

Importer: 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.

Wholesale dealer: any person located inside or outside the state of Florida who sells cigarettes to retail dealers or other persons for purpose of resale only. This does 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 F.S. 210.15, or to any cigarette manufacturer, export warehouse proprietor, or importer who holds a valid current permit under 26 U.S.C. s. 5712.

Retail dealer: 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 section 569.003, F.S.

Counterfeit cigarette: cigarettes that have false manufacturing labels, product packs with counterfeit tax stamps, or any combination thereof.

Stamp or stamps: the indicia required to be placed on cigarette packages that evidence payment of the tax on cigarettes under section 210.02, F.S.

Criminal activity and racketeering activity: to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment. Both activities have specific information under various provisions that apply.

Payment of Taxes – Section 210.02(2), F.S.

The new law allows the Secretary of the Department of Business and Professional Regulation to require all wholesale dealers who sell cigarettes within the state to remit taxes imposed under section 210.02, Florida Statutes (F.S.), via certified check or electronic funds transfer regardless of the annual payment amount, and requires any wholesale dealer or agent to file these taxes via certified check or electronic funds transfer for the first 12 months after the initial period of licensure or appointment.

Each stamping agent currently paying cigarette excise taxes by any means other than a certified check or electronic funds transfer must obtain the electronic funds transfer approval or pay by certified check. All new stamping agent permits will be required to pay using either of these methods.

The Division of Alcoholic Beverages and Tobacco will adopt rules governing the payment of taxes by electronic funds transfer.

Please contact the Florida Department of Revenue to set up any new electronic funds transfer accounts necessary. They may be reached at 800.352.3671 or 800.488.6800. You may also enroll online at: <http://dor.myflorida.com/dor/eservices/>.

Ten-Day Law for Unstamped Cigarettes – Section 210.06(1), F.S.

The new law requires cigarette packages to be stamped within 10 days of receipt by the wholesaler; requires unstamped inventories to be kept separate; and prohibits the transfer of unstamped products.

Every wholesale dealer within the state must place a tax stamp on all unstamped cigarette packages as required under this section within 10 days after receipt of such products. Wholesale dealers outside this state must affix such stamps before shipping cigarettes into the state.

A tax stamp must be applied to all cigarette packages intended for sale or distribution to consumers subject to the tax imposed under section 210.02, F.S., except as otherwise provided by statute.

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.

Wholesale 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.

Except as provided in section 210.04(9) or section 210.09(1), F.S., no person, other than a wholesale dealer or distributing agent that receives unstamped cigarette packages directly from a cigarette manufacturer or importer in accordance with this section as well as section 210.085, F.S., shall hold or possess an unstamped cigarette package. Wholesale dealers will be permitted to set aside, without application of stamps, only such part of the wholesale dealer's stock that is identified for sale or distribution outside this state. If a wholesale dealer maintains stocks of unstamped cigarette packages, such unstamped packages must be stored separately from stamped product packages. Unstamped cigarette packages cannot be transferred by a wholesale dealer to another facility of the dealer within this state, or to another person within this state.

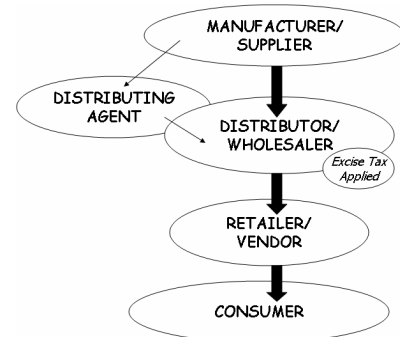
Bond Requirements – Section 210.08, F.S.

Each wholesale dealer, agent or distributing agent must file with the division a surety bond, certificate of

credit, or irrevocable letter of credit acceptable to the division in an amount equal to 110% of the estimated tax liability for 30 days, but not less than \$2,000.

Legal Flow of Cigarettes – Section 210.085, F.S.

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



The normal product flow for cigarettes is from the manufacturer, to the distributor, to the retailer, and then to the consumer. An importer may bring cigarettes into the country for manufacturers in other countries, and a cigarette distributing agent may transfer cigarettes from the manufacturer to the distributor. **Florida Statutes now require all levels to obtain a permit to do business in this state.** The new legislation provides a 3-tier system of cigarette sales from manufacturer/importer to distributor to retailer.

Permit Requirements & Renewal – Sections 210.15 & 210.1605, F.S.

As required by section 210.15(1)(a), F.S., every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes within this state must file 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. The Division of Alcoholic Beverages and Tobacco is the agency that accepts the applications and issues the cigarette permits.

The automatic renewal of permits has been removed from the text of the statute, and **all entities are required to apply for a new permit at each renewal.** This application will be incorporated into the annual renewal form. The new legislation prohibits the issuance of a permit to anyone who owes delinquent taxes, has had a permit revoked, or has been convicted of any offense of the cigarette law or of any felony within a certain time, and provides for revocation of the permit should the entity fail to be qualified to obtain a permit. The division will provide guidelines for approval or denial of permit applications.

The division may refuse to issue a permit to: any person, firm, or corporation whose permit under the cigarette law has been revoked; any corporation of which an officer has had his or her permit under the cigarette law revoked; or 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 who at any later time would be prohibited from obtaining such permit under the cigarette law, may be revoked by the division.

Law Enforcement – Section 210.12, F.S.

The new legislation adds state law enforcement officers to those persons required to report seizures of unstamped cigarettes to the division. The Division of Alcoholic Beverages and Tobacco, Bureau of Enforcement, will be required to keep records of all seized cigarettes by division enforcement agents and other law enforcement officers.

Whenever the division or its authorized agent, or any law enforcement officer of this state, has probable cause to believe that a vehicle is transporting cigarettes in violation of this law, the vehicle may be stopped and inspected for contraband cigarettes.

The state has been given the authorization to seize, confiscate, and forfeit any cigarettes upon which taxes due have not been paid, or otherwise held in violation of the requirements of this law. All fixtures, equipment, and other materials and personal property on the premises of any wholesale dealer, retail dealer, or distributing agent who attempts to defraud the state may be confiscated. All cigarettes seized, confiscated, or forfeited to the state will be destroyed.

Reporting Requirements – Section 210.09, F.S.

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, is required to keep records and make reports on forms prescribed by the division. Unless otherwise designated by the division, reports are to be made on or before the 10th day of the month following the month for which the reports are made.

All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers are to maintain and keep records of cigarettes received, sold, or delivered within the state for a period of 3 years at the place of business where any transaction takes place.

All persons who are cigarette manufacturers, importers, wholesalers, or distributing agents, and agents and employees of the same, are required to keep daily sales tickets or invoices of cigarette sales. It is the responsibility of these persons to ensure each sales ticket and invoice handled by them or on their behalf, shows the correct name and address to whom the cigarettes were sold and the number of packages or cartons of each brand sold. If the sale is made within the limits of a qualified municipality, the correct name of the municipality must also be indicated.

Counterfeit Cigarettes – Section 210.12, F.S.

It is unlawful to sell, or possess with the intent to sell, counterfeit cigarettes, as defined in section 210.01(22), F.S. The sale of or possession for sale of counterfeit cigarettes by any person or by a manufacturer, importer, distributing agent, wholesale dealer, or retail dealer will result in the seizure of the product and related machinery by the division or any law enforcement agency.

Any counterfeit cigarettes seized will be destroyed.

**Penalty Guidelines –
61A-2.022, Florida Administrative Code**

STATUTE	VIOLATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE	FOURTH OCCURRENCE
210.06(3), 210.18	Possession of less than 500 packs of non-tax paid cigarettes for purpose of resale	\$500 and excise tax, not to exceed \$1,000	\$1000 and excise tax	\$2000 and excise tax	Revocation and excise tax
210.06(3), 210.18	Possession of 500 or more packs of non-tax paid cigarettes	Revocation and excise tax			
210.12(1)	Possession of untaxed cigarettes, or held in violation of chapter	Seize, confiscate, and forfeit any cigarettes upon which taxes are unpaid and any receptacle they are held in			
210.12(2)	Failure to keep or make record, return, report, or inventory with intent to defraud; keeps or makes false or fraudulent record, return, report, or inventory, refuses to pay any taxes imposed	Forfeiture of all fixtures, equipment, other materials, personal property. Cigarettes will be destroyed			
210.15(1)(d)	Prohibition from obtaining a permit after one has been revoked	Revocation of permit			
210.15(1)(b)	Purchasing cigarettes for purpose of resale from other than a licensed wholesale dealer	\$1000	\$2000	Revocation	
210.16(1)(3)	Violation of any of the provisions of chapter 210 or chapter 569	Division may suspend or revoke permit; civil penalties up to \$2,500			
210.16(2)	Ineligible to obtain new permit or renew permit	Revocation			
210.18(2)	Fails, neglects, or refuses to comply with, or violates provisions of this part or rules	First degree misdemeanor	Third degree felony		
210.18(3)	Falsely or fraudulently makes, forges, alters, or counterfeits tax stamps, or fails to comply with any other requirement of this part	Third degree felony			
210.18(9)	Sale, or possession for sale, of counterfeit cigarettes	Seizure of cigarettes and related machinery			

STATUTE	VIOLATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE	FOURTH OCCURRENCE
210.18(10)	<p>Unlawful to sell or possess with intent to sell counterfeit cigarettes Non permit holder or retailer Less than two cartons:</p> <p>Two cartons or more:</p> <p>Permit holder, other than retail. Less than ten cartons:</p> <p>Ten cartons or more:</p>	<p><u>Third degree felony</u> Up to \$1,000 or five times the retail value, whichever is greater</p> <p>Up to \$2,000 or five times the retail value, whichever is greater</p> <p><u>Third degree felony</u> Up to \$1,000 or five times the retail value, whichever is greater</p> <p>Up to \$2,000 or five times the retail value, whichever is greater</p>	<p>Up to \$5,000 or five times the retail value, whichever is greater, and revocation of permit</p> <p>Up to \$50,000 or five times the retail value, whichever is greater, and revocation of the permit</p> <p>Up to \$5,000 or five times the retail value, whichever is greater, and revocation of permit</p> <p>Up to \$50,000 or five times the retail value, whichever is greater, and revocation of the permit</p>		
210.181(1)	Knowingly omits, neglects, or refuses to comply, or does anything prohibited by this part	\$1,000 fine or five times the retail value of cigarettes involved, whichever is greater, in addition to any other penalty			
210.181(2)	Failure to pay cigarette tax	Penalty of five times the unpaid tax, in addition to any other penalty			

Division of Alcoholic Beverages and Tobacco
District Auditing Offices

Pensacola

4900 Bayou Blvd, Ste 210
Bayou Corporate Center
Pensacola FL 32503
850.494.5958
Escambia, Holmes, Okaloosa, Santa Rosa, Walton, Washington

Tallahassee

1940 North Monroe St
Northwood Centre
Tallahassee FL 32399-1026
850.922.2288
Bay, Calhoun, Dixie, Franklin, Gadsden, Gulf, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Taylor, Wakulla

Jacksonville

7960 Arlington Expwy, Ste 601
Jacksonville FL 32211
904.727.5554
Alachua, Baker, Bradford, Clay, Columbia, Duval, Gilchrist, Hamilton, Nassau, Putnam, St. Johns, Suwannee, Union

Orlando

400 West Robinson St, Rm 709
North Tower, Hurston Bldg
Orlando FL 32801-1700
407.245.0765
Brevard, Citrus, Flagler, Indian River, Lake, Levy, Marion, Orange, Osceola, Seminole, Sumter, Volusia

Tampa

1313 Tampa St
Park Trammel Bldg, Ste 914
Tampa FL 33602-3303
813.272.2613
Charlotte, DeSoto, Glades, Hardee, Hernando, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, Sarasota

Fort Lauderdale

5080 Coconut Creek Pkwy, Ste B
Margate FL 33063-3942
954.917.1352
Broward, Collier, Hendry, Martin, Okeechobee, Palm Beach, St. Lucie

Miami

8240 N.W. 52nd Terrace, Suite 302
Doral, FL 33166
305.470.5044
Dade, Monroe

Division of Alcoholic Beverages and Tobacco
District Licensing & Enforcement Offices

Pensacola

4900 Bayou Blvd, Ste 210
Bayou Corporate Center

Pensacola FL 32503
850.494.5970
Escambia, Okaloosa, Santa Rosa

Panama City

7948 Front Beach Rd
Panama City FL 32407
850.236.3050
Bay, Calhoun, Gulf, Holmes, Jackson, Walton, Washington

Tallahassee

1940 North Monroe St
Northwood Centre
Tallahassee FL 32399-1021
850.488.4271
Franklin, Gadsden, Jefferson, Lafayette, Leon, Liberty, Madison, Suwannee, Wakulla

Jacksonville

7960 Arlington Expwy, Ste 600
Jacksonville FL 32211
Licensing: 904.727.5552; Enforcement: 904.727.5550
Baker, Bradford, Clay, Columbia, Duval, Hamilton, Nassau, St. Johns, Union

Gainesville

240 NW 76th Dr, Ste B
Gainesville FL 32607
352.333.2515
Alachua, Citrus, Dixie, Gilchrist, Levy, Marion, Putnam, Sumter, Taylor

Orlando

400 West Robinson St, Rm 709
North Tower, Hurston Bldg
Orlando FL 32801
Licensing: 407.245.0785; Enforcement: 407.245.0780
Brevard, Flagler, Lake, Orange, Osceola, Seminole, Volusia

Tampa

1313 Tampa St
Park Trammel Bldg, Ste 909
Tampa FL 33602
813.272.2610
Hardee, Hernando, Highlands, Hillsborough, Pasco, Pinellas, Polk

Fort Myers

4100 Center Point Dr, Ste 101
Fort Myers FL 33916
Licensing: 941.278.7195; Enforcement: 941.278.7337
Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Manatee, Sarasota

Fort Lauderdale

5080 Coconut Creek Pkwy, Ste C
Margate FL 33063-3942
Licensing: 954.917.1350; Enforcement: 954.917.1346
Broward

Fort Pierce

4984 S 25th St
Fort Pierce FL 34981
561.468.3927
Indian River, Martin, Okeechobee, St. Lucie

West Palm Beach

400 North Congress Ave, Ste 150

West Palm Beach FL 33401
Licensing: 561.682.0077; Enforcement: 561.681.6200
Palm Beach

Miami

8240 N.W. 52nd Terrace, Suite 303
Doral, FL 33166
305.470.5044
Dade

Key West

3141 Riviera Drive
Key West, FL 33040
305.292.6755
Monroe