

By Senator Dockery

15-1157B-04

1 A bill to be entitled
2 An act relating to nonsettling-manufacturer
3 cigarettes; creating s. 210.0205, F.S.;
4 providing definitions; imposing a fee on
5 certain cigarettes; providing payment
6 requirements; requiring reporting of the number
7 and denominations of stamps affixed to
8 individual packages of certain cigarettes by
9 manufacturer and brand family; authorizing
10 rulemaking regarding such reports; requiring
11 registration with the Division of Alcoholic
12 Beverages and Tobacco of the Department of
13 Business and Professional Regulation of
14 nonsettling manufacturers of cigarettes;
15 requiring development, maintenance, and
16 publication by the division of a list of
17 nonsettling manufacturers of cigarettes which
18 have certified their compliance with this act;
19 treating cigarettes of certain manufacturers
20 that have not paid the fee imposed by this act
21 or that have not complied with reporting
22 requirements as cigarettes for which the tax
23 imposed by s. 210.02, F.S., has not been paid;
24 prohibiting the stamping of certain cigarettes
25 for which the fee imposed by this act has not
26 been paid in full or the nonsettling
27 manufacturer of which has not complied with
28 reporting requirements; creating s. 210.0207,
29 F.S.; prohibiting the transport of certain
30 unstamped cigarettes across state lines under
31 certain circumstances; prohibiting the affixing

1 of certain stamps to certain cigarettes or
2 paying certain excise taxes prohibited by
3 another state under certain circumstances;
4 providing for reports on the transport of
5 stamped cigarettes across state lines;
6 providing a definition; providing an effective
7 date.

8
9 WHEREAS, it is the intent of the Legislature to prevent
10 nonsettling manufacturers from undermining the state's policy
11 of reducing underage smoking by offering their cigarettes for
12 sale substantially below the price of cigarettes of other
13 manufacturers; to protect the tobacco settlement agreement and
14 funding, which is reduced as a result of the growth of
15 nonsettling-manufacturer cigarette sales, for programs funded
16 in whole or in part by payments to the state under the tobacco
17 settlement agreement and to recoup for the state
18 settlement-payment revenue lost to the state as a result of
19 nonsettling-manufacturer cigarette sales; to fund enforcement
20 and administration of nonsettling-manufacturer legislation and
21 the fee imposed in this act, including reasonable
22 administrative costs incurred by wholesale dealers complying
23 with any additional reporting requirements necessitated by
24 this act; and to fund such other purposes as the Legislature
25 determines, NOW, THEREFORE,

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 210.0205, Florida Statutes, is
30 created to read:

31 210.0205 Nonsettling-manufacturer fee.--

1 (1) As used in this section, the term:
2 (a) "Brand family" means all styles of cigarettes sold
3 under the same trademark and differentiated from one another
4 by means of additional modifiers or descriptors, including,
5 but not limited to, "menthol," "lights," "kings," and "100s."
6 The term includes any brand name, alone or in conjunction with
7 any other word; trademark; logo; symbol; motto; selling
8 message; recognizable pattern of colors; or other indicia of
9 product identification identical or similar to, or
10 identifiable with, a previously known brand of cigarettes.
11 (b) "Consumer Price Index" means the Consumer Price
12 Index for All Urban Consumers as published by the Bureau of
13 Labor Statistics of the United States Department of Labor.
14 (c) "Manufacturer" means a person or entity who
15 manufactures, fabricates, or assembles cigarettes. The term
16 includes an entity that is the first importer into the United
17 States of cigarettes manufactured abroad.
18 (d) "Nonsettling manufacturer" means any tobacco
19 product manufacturer that has not entered into the tobacco
20 settlement agreement defined in s. 215.56005(1)(f) or into the
21 Attorneys General Settlement Agreement with Brooke Group,
22 Ltd., Liggett & Myers, Inc., and Liggett Group, Inc., dated
23 March 15, 1996.
24 (e) "Nonsettling-manufacturer cigarettes" means
25 cigarettes manufactured by a nonsettling manufacturer, except
26 when payments on such cigarettes are due to be made by a
27 settling manufacturer pursuant to a tobacco settlement
28 agreement described in paragraph (d).
29 (2) A fee, in addition to all other taxes or fees of
30 every kind imposed by law, is imposed upon the sale, receipt,
31 purchase, possession, consumption, handling, distribution, and

1 use in this state of nonsettling-manufactuer cigarettes to the
2 package of which an agent affixes a stamp or stamp insignia as
3 required by law or which are sold or purchased in the state
4 but are not required to bear a stamp or stamp insignia of this
5 state. The fee is in the amount of 25 mills per cigarette, to
6 be adjusted upward annually by the division each January 1 by
7 the greater of 3 percent or the Consumer Price Index, applied
8 each year for the previous year, beginning with the year of
9 the effective date of this act.

10 (3) The division shall collect the fee once each month
11 from each nonsettling manufacturer based on information
12 received pursuant to subsection (6). The division shall mail
13 to each nonsettling manufacturer not later than the 15th day
14 of each month a notice of the fee due from that manufacturer
15 for sales of its cigarettes made in the preceding month. Each
16 such nonsettling manufacturer shall ensure that the division
17 has received payment of the fee in full no later than the last
18 day of the month in which the notice was mailed. Except as
19 otherwise provided in this section, the fee shall be imposed,
20 collected, paid, administered, and enforced in the same manner
21 as the tax on cigarettes imposed by s. 210.02.

22 (4) A nonsettling manufacturer selling cigarettes in
23 this state on the effective date of this act shall provide to
24 the division the information described in subsections (7) and
25 (8) and pay the fee imposed by subsection (2) within 30 days
26 after the effective date of this act. If a nonsettling
27 manufacturer is not selling cigarettes in this state on the
28 effective date of this act, before commencing sales of
29 cigarettes in this state, the nonsettling manufacturer shall
30 prepay the fee imposed by subsection (2). The prepayment
31 amount shall be a sum determined by multiplying by 25 mills

1 the number of cigarettes the division reasonably projects that
2 the nonsettling manufacturer will sell in this state in the
3 first calendar month or \$50,000, whichever is more. The
4 division may require a nonsettling manufacturer to provide any
5 information reasonably necessary to determine the amount of
6 the prepayment fee and, in the case of prepayment, shall
7 establish procedures for providing reimbursement to
8 nonsettling manufacturers if actual sales are less than sales
9 projected by the division and for additional payment by
10 nonsettling manufacturers if actual sales are greater than
11 sales projected by the division. As used in this subsection,
12 the term "cigarettes" refers only to nonsettling-manufacturer
13 cigarettes.

14 (5) The purposes of the fee are to:

15 (a) Prevent nonsettling manufacturers from undermining
16 the state's policy of reducing underage smoking by offering
17 cigarettes for sale substantially below the price of
18 cigarettes of other manufacturers.

19 (b)1. Protect the tobacco settlement agreement, as
20 defined in s. 215.56005(1)(f), and funding, which is reduced
21 as a result of the growth of nonsettling-manufacturer
22 cigarette sales, for programs funded in whole or in part by
23 payments to the state under the tobacco settlement agreement;
24 and

25 2. Recoup for the state settlement-payment revenue
26 lost to the state as a result of nonsettling-manufacturer
27 cigarette sales.

28 (c) Fund enforcement and administration of
29 nonsettling-manufacturer legislation and the fee imposed by
30 this section, including reasonable administrative costs

31

1 incurred by wholesale dealers complying with any additional
2 reporting requirements necessitated by this section.

3 (d) Fund such other purposes as the Legislature
4 determines; however, 20 percent of proceeds received under
5 this act shall be provided quarterly to the Department of
6 Health, Division of Health Awareness and Tobacco, for the
7 purpose of implementing a statewide anti-smoking marketing and
8 advertising campaign to reduce youth tobacco use, including
9 Truth brand advertisements.

10 (6) Monthly reports shall be made to the division
11 pursuant to s. 210.09(2) by each agent and wholesaler. Such
12 reports shall state the number and denominations of stamps or
13 stamp insignia affixed to individual packages of
14 nonsettling-manufacturer cigarettes and the number of
15 individual packages of nonsettling-manufacturer cigarettes
16 otherwise sold or purchased in this state or otherwise handled
17 or distributed in this state for sale in another state,
18 commonwealth, or territory of the United States, by
19 manufacturer and brand family, sold for each place of business
20 in the month preceding the month in which the report is made.
21 The division may adopt rules requiring any agent, wholesaler,
22 wholesale dealer, or nonsettling manufacturer to provide in
23 the monthly report any information necessary or appropriate to
24 determining the fee due under subsection (2) or to enforcing
25 this act.

26 (7) Before commencing sales of cigarettes in this
27 state or, if selling cigarettes in this state on the effective
28 date of this act, within 30 days after the effective date of
29 this act, a nonsettling manufacturer shall provide to the
30 division, on a form prescribed by the division:

31

1 (a) The complete name, address, and telephone number
2 of the nonsettling manufacturer.

3 (b) The date the nonsettling manufacturer began or
4 intends to begin selling cigarettes in this state.

5 (c) The names of the brand families of the cigarettes
6 the nonsettling manufacturer is selling or will sell in this
7 state.

8 (d) A statement of the nonsettling manufacturer's
9 intention to comply with the obligations imposed by this
10 section.

11 (e) The name, address, telephone number, and signature
12 of an officer of the nonsettling manufacturer attesting to all
13 of the information described in this subsection.

14 (8) Each nonsettling manufacturer subject to the fee
15 imposed by subsection (2) shall certify to the division on the
16 first day of each month that the manufacturer is in compliance
17 with this section and has paid in full the fee imposed by
18 subsection (2). The division shall develop, maintain, and
19 publish on its Internet website a directory listing all
20 nonsettling manufacturers that have provided current,
21 accurate, and complete certifications. The division shall
22 provide a copy of the list to any person upon request.

23 (9) Cigarettes of a nonsettling manufacturer that has
24 not paid a fee imposed by subsection (2), or that has not
25 complied with the reporting requirements of subsections (4),
26 (6), (7), and (8), shall be treated as cigarettes for which
27 the tax imposed by s. 210.02 has not been paid. A person shall
28 not affix to any package of nonsettling-manufacturer
29 cigarettes the stamp required under s. 210.06, or otherwise
30 purchase or sell such cigarettes, after such person receives
31 notice from the division that the nonsettling manufacturer of

1 such cigarettes has not paid in full the fee imposed by
2 subsection (2) or if the nonsettling manufacturer is not
3 listed on the division's directory described in subsection
4 (8).

5 Section 2. Section 210.0207, Florida Statutes, is
6 created to read:

7 210.0207 Cigarettes in interstate commerce.--

8 (1) A person may not transport or cause to be
9 transported from this state cigarettes for sale in another
10 state without first affixing to each package of the cigarettes
11 the stamp required by the state in which the cigarettes are to
12 be sold or paying any other excise tax on the cigarettes
13 imposed by the state in which the cigarettes are to be sold.

14 (2) A person may not affix to a package of cigarettes
15 the stamp required by another state or pay any other excise
16 tax on the cigarettes imposed by another state if the other
17 state prohibits stamps from being affixed to a package of the
18 cigarettes, prohibits the payment of any other excise tax on
19 the cigarettes, or prohibits the sale of the cigarettes.

20 (3) On or before the 10th day of each month, a person
21 who transports or causes to be transported from this state
22 cigarettes for sale in another state shall submit to the
23 division a report identifying the quantity, brand family, and
24 style of each brand family of the cigarettes transported or
25 caused to be transported in the preceding calendar quarter and
26 the name and address of each recipient of the cigarettes.

27 (4) For purposes of this section, the term "person"
28 means an individual, partnership, committee, association,
29 corporation, or other organization or group of persons. The
30 term does not include any common or contract carrier or public
31

1 warehouse that is not owned, in whole or in part, directly or
2 indirectly by such person.

3 Section 3. This act shall take effect upon becoming a
4 law.

5
6 *****

7 SENATE SUMMARY

8 Imposes fees on the sale, handling, etc. in this state of
9 cigarettes of manufacturers not party to a described
10 tobacco settlement agreement and provides procedures for
11 implementing the collection of fees and for conducting
12 related procedural activities.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31