

HB 0405

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1 A bill to be entitled

2 An act relating to nonsettling-manufacturer cigarettes;
3 creating s. 210.0205, F.S.; providing definitions;
4 imposing a fee on certain cigarettes; providing payment
5 requirements; requiring reporting of the number and
6 denominations of stamps affixed to individual packages of
7 certain cigarettes by manufacturer and brand family;
8 authorizing rulemaking regarding such reports; requiring
9 registration with the Attorney General of nonsettling
10 manufacturers of cigarettes; requiring development,
11 maintenance, and publication by the Attorney General of a
12 list of nonsettling manufacturers of cigarettes that have
13 certified their compliance with this act; treating
14 cigarettes of certain manufacturers that have not paid the
15 fee imposed by this act or that have not complied with
16 reporting requirements as cigarettes for which the tax
17 imposed by s. 210.02, F.S., has not been paid; prohibiting
18 the stamping of certain cigarettes for which the fee
19 imposed by this act has not been paid in full or the
20 nonsettling manufacturer of which has not complied with
21 reporting requirements; creating s. 210.0207, F.S.;
22 prohibiting the transport of certain unstamped cigarettes
23 across state lines under certain circumstances;
24 prohibiting the affixing of certain stamps to certain
25 cigarettes or paying certain excise taxes prohibited by
26 another state under certain circumstances; providing for
27 reports on the transport of stamped cigarettes across
28 state lines; providing a definition; providing an
29 effective date.

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WHEREAS, it is the intent of the Legislature to impose a fee on cigarettes of nonsettling manufacturers in order to recover health care costs incurred by the state as a result of sales of nonsettling-manufacturer cigarettes; to prevent nonsettling manufacturers from undermining the state's policy of reducing underage smoking by offering their cigarettes for sale substantially below the price of cigarettes of other manufacturers; to protect funding, which is reduced as a result of the growth of nonsettling-manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the tobacco settlement agreement and to recoup for the state settlement-payment revenue lost to the state as a result of nonsettling-manufacturer cigarette sales; to fund enforcement and administration of nonsettling-manufacturer legislation and the fee imposed herein, including reasonable administrative costs incurred by wholesale dealers complying with any additional reporting requirements necessitated by this act; and to fund such other purposes as the Legislature shall determine, NOW, THEREFORE,

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

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

210.0205 Nonsettling-manufacturer fee.--

(1) As used in this section:

(a) "Manufacturer" includes an entity that is the first importer into the United States of cigarettes manufactured

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59 abroad.

60 (b) "Nonsettling manufacturer" means any tobacco product
61 manufacturer that has not entered into the tobacco settlement
62 agreement, as defined in s. 215.56005(1)(f), or into the
63 Attorneys General Settlement Agreement with Brooke Group, Ltd.,
64 Liggett & Myers, Inc., and Liggett Group, Inc., dated March 15,
65 1996.

66 (c) "Nonsettling-manufacturer cigarettes" means cigarettes
67 manufactured by a nonsettling manufacturer.

68 (2) A fee, in addition to all other taxes or fees of every
69 kind imposed by law, is imposed upon the sale, receipt,
70 purchase, possession, consumption, handling, distribution, and
71 use in this state of nonsettling-manufacturer cigarettes, to
72 which a package of such cigarettes an agent affixes a stamp or
73 stamp insignia as required by law, in the amount of 25 mills per
74 cigarette, to be adjusted upward annually each January 1 by the
75 greater of 3 percent or the Consumer Price Index as adopted by
76 the division by rule, applied each year for the previous year,
77 beginning with the year of the effective date of this act. The
78 division shall collect the fee each month directly from each
79 nonsettling manufacturer based on information received pursuant
80 to subsection (5). Except as otherwise provided in this section,
81 the fee shall be imposed, collected, paid, administered, and
82 enforced in the same manner as the tax on cigarettes imposed by
83 s. 210.02.

84 (3) A nonsettling manufacturer selling cigarettes in this
85 state on the effective date of this act shall provide to the
86 division the information described in subsections (6) and (7)
87 and pay the fee imposed by subsection (2) within 30 days after

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88 the effective date of this act. If a nonsettling manufacturer is
 89 not selling cigarettes in this state on the effective date of
 90 this act, before selling cigarettes in this state, the
 91 nonsettling manufacturer shall prepay the fee imposed by
 92 subsection (2). The prepayment amount shall be determined by
 93 multiplying by 25 mills the number of cigarettes the division
 94 reasonably projects that the nonsettling manufacturer will sell
 95 in this state in the first calendar month, or \$50,000, whichever
 96 is more. The division may require a nonsettling manufacturer to
 97 provide any information reasonably necessary to determine the
 98 amount of the prepayment fee and, in the case of prepayment,
 99 shall establish regulations providing for reimbursement to
 100 nonsettling manufacturers if actual sales are less than sales as
 101 projected by the division and for additional payment by
 102 nonsettling manufacturers if actual sales are greater than sales
 103 as projected by the division.

104 (4) The purposes of the fee are to:

105 (a) Recover health care costs incurred by the state as a
 106 result of sales of nonsettling-manufacturer cigarettes.

107 (b) Prevent nonsettling manufacturers from undermining the
 108 state's policy of reducing underage smoking by offering
 109 cigarettes for sale substantially below the price of cigarettes
 110 of other manufacturers.

111 (c) Protect funding, which is reduced as a result of the
 112 growth of nonsettling-manufacturer cigarette sales, for programs
 113 funded in whole or in part by payments to the state under the
 114 tobacco settlement agreement and to recoup for the state
 115 settlement-payment revenue lost to the state as a result of
 116 nonsettling-manufacturer cigarette sales.

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117 (d) Fund enforcement and administration of nonsettling-
118 manufacturer legislation and the fee imposed by this section,
119 including reasonable administrative costs incurred by wholesale
120 dealers complying with any additional reporting requirements
121 necessitated by this section.

122 (e) Fund such other purposes as the Legislature
123 determines.

124 (5) Monthly reports shall be made to the division pursuant
125 to s. 210.09(2) by each agent and wholesaler. Such reports shall
126 state the number and denominations of stamps or stamp insignia
127 affixed to individual packages of nonsettling-manufacturer
128 cigarettes, by manufacturer and brand family, sold for each
129 place of business in the month preceding the month in which the
130 report is made. The division may adopt rules requiring any
131 agent, wholesaler, wholesale dealer, or nonsettling manufacturer
132 to provide in the monthly report any information necessary or
133 appropriate to determining the fee due under subsection (2) or
134 to enforcing any provision of this act.

135 (6) Before commencing sales of cigarettes in this state,
136 or, if selling cigarettes in this state on the effective date of
137 this act, within 30 days after the effective date of this act, a
138 nonsettling manufacturer shall provide to the Attorney General,
139 on a form prescribed by the Attorney General:

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

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

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

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146 (d) A statement of the nonsettling manufacturer's
147 intention to comply with the obligations imposed by this
148 section.

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

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153 The Attorney General shall make information provided pursuant to
154 this subsection available to the division.

155 (7) Each nonsettling manufacturer subject to the fee
156 imposed by subsection (2) shall certify to the Attorney General
157 on the first day of each month that the manufacturer is in
158 compliance with this section and has paid in full the fee
159 imposed by subsection (2). The Attorney General shall develop,
160 maintain, and publish on its Internet website a directory
161 listing all nonsettling manufacturers that have provided
162 current, accurate, and complete certifications. The Attorney
163 General shall provide a copy of the list to any person upon
164 request.

165 (8) Cigarettes of a nonsettling manufacturer that has not
166 paid the fee imposed by subsection (2), or that has not complied
167 with the reporting requirements of subsections (3), (5), (6),
168 and (7), shall be treated as cigarettes for which the tax
169 imposed by s. 210.02 has not been paid. A person shall not affix
170 to any package of nonsettling-manufacturer cigarettes the stamp
171 required under s. 210.06 after such person receives notice from
172 the division that the nonsettling manufacturer of such
173 cigarettes has not paid in full the fee imposed by subsection
174 (2) or if the nonsettling manufacturer is not listed on the

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175 Attorney General's directory described in subsection (7).

176 Section 2. Section 210.0207, Florida Statutes, is created
 177 to read:

178 210.0207 Cigarettes in interstate commerce.--

179 (1) A person may not transport or cause to be transported
 180 from this state cigarettes for sale in another state without
 181 first affixing to each package of the cigarettes the stamp
 182 required by the state in which the cigarettes are to be sold or
 183 paying any other excise tax on the cigarettes imposed by the
 184 state in which the cigarettes are to be sold.

185 (2) A person may not affix to a package of cigarettes the
 186 stamp required by another state or pay any other excise tax on
 187 the cigarettes imposed by another state if the other state
 188 prohibits stamps from being affixed to a package of the
 189 cigarettes, prohibits the payment of any other excise tax on the
 190 cigarettes, or prohibits the sale of the cigarettes.

191 (3) On or before the 10th day of each month, a person who
 192 transports or causes to be transported from this state
 193 cigarettes for sale in another state shall submit to the
 194 division a report identifying the quantity, brand family, and
 195 style of each brand family of the cigarettes transported or
 196 caused to be transported in the preceding calendar quarter and
 197 the name and address of each recipient of the cigarettes.

198 (4) For purposes of this section, "person" means an
 199 individual, partnership, committee, association, corporation, or
 200 any other organization or group of persons. "Person" does not
 201 include any common or contract carrier or public warehouse that
 202 is not owned, in whole or in part, directly or indirectly by
 203 such person.

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