

Bill No. SB 1988

Barcode 133428

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (King) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

210.0205 Florida tobacco marketing equity and fiscal compliance requirements.--

(1) Notwithstanding s. 210.01, as used in ss. 210.0205-210.0208, the term:

(a) "Attorney General's Settlement Agreement of 1996" means the agreement executed by the Attorney General of this state on March 15, 1996, settling claims of this state against Liggett Group, Inc., and others, as such agreement was amended prior to January 1, 2006.

(b) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including,

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1 but not limited to, "menthol," "lights," "kings," and "100s,"
2 and includes any brand name used alone or in conjunction with
3 any other word, trademark, logo, symbol, motto, selling
4 message, recognizable pattern of colors, or any other indicia
5 of product identification identical or similar to, or
6 identifiable with, a previously known brand of cigarettes.

7 (c) "Cigarette manufacturer" means a person or entity
8 holding a valid permit under 26 U.S.C. s. 5712 which
9 manufactures, fabricates, or assembles cigarettes. The term
10 includes any entity that is the first importer into the United
11 States of cigarettes manufactured abroad.

12 (d) "Governor's Settlement Agreement of 1997" means
13 the agreement executed by the Governor of this state on August
14 25, 1997, settling the claims of this state in the case of
15 Florida v. American Tobacco Company, et al., case no. 95-1466,
16 Fifteenth Judicial Circuit, as such agreement was amended
17 prior to January 1, 2006.

18 (e) "Inflation adjustment" means the greater of 3
19 percent or the percentage increase in the Consumer Price Index
20 applicable each year pursuant to paragraph II.B.3. of the
21 Governor's Settlement Agreement of 1997.

22 (f) "Master Settlement Agreement" means the agreement
23 administered by the National Association of Attorneys General
24 settling tobacco related claims of 46 states, not including
25 Florida, against various cigarette manufacturers and all
26 amendments to such agreement.

27 (g) "Nonsettling manufacturer" means any cigarette
28 manufacturer that is not a 1997 settling manufacturer or a
29 1996 settling manufacturer.

30 (h) "Stamping agent wholesaler" means any wholesale
31 dealer licensed by the division to purchase and affix stamps

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1 evidencing payment of the excise tax required by s. 210.02.

2 The term includes an "agent" as defined in s. 210.01(9).

3 (i) "1996 settling manufacturer" means any cigarette
4 manufacturer that is a party to the Attorney General's
5 Settlement Agreement of 1996 and its successors in interest.

6 (j) "1997 settling manufacturer" means any cigarette
7 manufacturer that is a party to the Governor's Settlement
8 Agreement of 1997 and its successors in interest.

9 (2) A fee, in addition to all other taxes or fees of
10 every kind imposed by law, is imposed upon the sale, receipt,
11 purchase, possession, consumption, handling, distribution, and
12 use in this state of cigarettes manufactured by a 1996
13 settling manufacturer or a nonsettling manufacturer, if a
14 stamping agent wholesaler is required by law to affix a stamp
15 or stamp insignia to the package in which such cigarettes are
16 sold or purchased or if such cigarettes may legally be sold or
17 purchased in the state without bearing a stamp or stamp
18 insignia of this state. The rate of the fee is 20.3 mills per
19 cigarette in fiscal year 2006-2007. Beginning January 1, 2008,
20 and on January 1 of each year thereafter, the division shall
21 adjust the rate of the fee by the inflation adjustment.

22 (3) The division shall collect the fee once each month
23 from each manufacturer upon which a fee is imposed under
24 subsection (2), based on information received pursuant to
25 subsection (5). The division shall mail to each such
26 manufacturer not later than the 15th day of each month a
27 notice of any credits available and the fee imposed upon such
28 manufacturer for sales of its cigarettes made in the preceding
29 month. Each such manufacturer shall ensure that the division
30 has received payment of any fee due after application of
31 available credits no later than the last day of the month in

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1 which the notice was mailed. Except as otherwise provided in
2 this section, proceeds from the fee shall be deposited into
3 the Tobacco Settlement Clearing Trust Fund and the fee shall
4 be imposed, collected, paid, administered, and enforced in the
5 same manner as the tax on cigarettes imposed by s. 210.02.

6 (4) Each nonsettling manufacturer and each 1996
7 settling manufacturer selling cigarettes in this state on July
8 1, 2006, shall provide to the division the information
9 described in subsections (6) and (7) and, except as otherwise
10 provided by s. 210.0207, pay the fee imposed by subsection
11 (2). If a nonsettling manufacturer is not selling cigarettes
12 in this state on July 1, 2006, before commencing sales of
13 cigarettes in this state, the nonsettling manufacturer shall
14 prepay the fee imposed by subsection (2). The prepayment
15 amount shall be the greater of \$50,000 or the product
16 determined by multiplying the number of cigarettes the
17 division reasonably projects that such nonsettling
18 manufacturer will sell in this state in the first calendar
19 month by the rate of the fee for the current year. The
20 division may require a nonsettling manufacturer to provide any
21 information reasonably necessary to determine the amount of
22 the prepayment fee and, in the case of prepayment, shall
23 establish procedures for providing reimbursement to
24 nonsettling manufacturers if actual sales are less than sales
25 projected by the division and for additional payment by such
26 nonsettling manufacturer if actual sales are greater than
27 sales projected by the division. As used in this subsection,
28 the term "cigarettes" refers only to cigarettes manufactured
29 by nonsettling manufacturers.

30 (5) The monthly report of a stamping agent wholesaler
31 required by s. 210.09(2) must state, by manufacturer and brand

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1 family, the number and denominations of stamps or stamp
2 insignia affixed to individual packages of cigarettes
3 manufactured by nonsettling manufacturers and 1996 settling
4 manufacturers. Each report required by s. 210.09(2) must
5 state, by manufacturer and brand family for each place of
6 business, the number of individual packages of cigarettes
7 manufactured by nonsettling manufacturers and 1996 settling
8 manufacturers and otherwise sold or purchased in this state or
9 otherwise handled or distributed in this state for sale in
10 another state, commonwealth, or territory of the United States
11 in the month preceding the month in which the report is made.
12 The division may adopt rules requiring any distributing agent,
13 wholesaler, wholesale dealer, importer, common carrier, 1996
14 settling manufacturer, and nonsettling manufacturer to provide
15 in the monthly report the information specified in this
16 subsection and any other information necessary to determine
17 the fee due under subsection (2) or to enforce ss.
18 210.0205-210.0208.

19 (6) Before commencing sales of cigarettes in this
20 state or, if selling cigarettes in this state on July 1, 2006,
21 by August 1, 2006, each nonsettling manufacturer and 1996
22 settling manufacturer shall provide to the division, in a form
23 prescribed by the division:

24 (a) The complete name, address, and telephone number
25 of the manufacturer.

26 (b) The date the manufacturer began or intends to
27 begin selling cigarettes in this state.

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

30 (d) A statement of the nonsettling manufacturer's
31 intention to comply with the obligations imposed by ss.

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1 210.0205-210.0207.

2 (e) The name, address, telephone number, and signature
3 of an officer of the manufacturer attesting to all of the
4 information described in this subsection.

5 (7) Each manufacturer subject to the fee imposed under
6 subsection (2) shall certify to the division on the first day
7 of each month that the manufacturer is in compliance with this
8 section and has paid in full the fee imposed under subsection
9 (2). The division shall develop, maintain, and publish on its
10 Internet website a directory listing all manufacturers that
11 have provided current, accurate, and complete certifications.
12 The division shall provide a copy of the list to any person
13 upon request.

14 (8) Cigarettes of a manufacturer that is subject to
15 but has not paid a fee imposed by subsection (2), or that has
16 not complied with the reporting requirements of subsections
17 (4), (6), (7), and (8), shall be treated as cigarettes for
18 which the tax imposed by s. 210.02 has not been paid. A
19 stamping agent wholesaler may not affix to any package of
20 cigarettes the stamp required under s. 210.06, or otherwise
21 purchase or sell such cigarettes, after such wholesaler
22 receives notice from the division that the manufacturer of
23 such cigarettes has not paid in full the fee imposed under
24 subsection (2) or if the nonsettling or the 1996 settling
25 manufacturer is not listed on the division's directory
26 described in subsection (7).

27 Section 2. Section 210.0206, Florida Statutes, is
28 created to read:

29 210.0206 Credits relating to tobacco litigation
30 settlement obligations; exemptions for certain
31 manufacturers.--

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1 (1) On July 1, 2006, each 1996 settling manufacturer
2 is granted, a credit against any monetary obligations
3 presently unpaid or subsequently owed to this state under the
4 Attorney General's Settlement Agreement of 1996. Such credit
5 is equal to the total fees paid by the 1996 settling
6 manufacturer under s. 210.0205, regardless of the year in
7 which the fees are paid or the year with respect to which the
8 monetary obligation is claimed by the state. An additional
9 credit is granted for any unused market exemption credits
10 allowed in subsection (2) which a 1996 settling manufacturer
11 chooses to assign to the state for such purpose. The Attorney
12 General and the division shall determine what evidence must be
13 provided for the purpose of such assignment of market
14 exemption credit. Such additional credit may not exceed 100
15 percent of all monetary obligations under the Attorney
16 General's Settlement Agreement of 1996 which are unpaid on
17 July 1, 2006, or subsequently owed to this state under such
18 agreement.

19 (2) Each 1996 settling manufacturer and each
20 nonsettling manufacturer selling cigarettes in this state on
21 January 1, 2006, is entitled to receive an annual credit
22 against the fee imposed by s. 210.0205(2). Such annual credit
23 is the rate of the fee set, pursuant to s. 210.0205(2), for
24 the current year multiplied by the manufacturer's exempt
25 share, multiplied by the number of cigarettes sold in this
26 state in the previous year. The "manufacturer's exempt share"
27 is the greater of the percentage of any market share exemption
28 used by the manufacturer under the master settlement agreement
29 on or before January 2006, or one-half of the manufacturer's
30 highest percentage share of total cigarette sales in this
31 state in any of the years 2001, 2002, 2003, 2004, or 2005. The

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1 provision of credits under this subsection must conform to the
2 following procedures:

3 (a) A manufacturer seeking the annual credit shall
4 apply with the division on or before July 1, 2006, and shall
5 include with such application an affidavit of the
6 manufacturer's chief executive officer which accurately states
7 such percentage of any market share exemption used by the
8 manufacturer under the master settlement agreement on or
9 before January 2006 and the manufacturer's best estimate of
10 the number of the manufacturer's cigarettes sold in this state
11 in the years 2001, 2002, 2003, 2004, and 2005.

12 (b) On or before July 1, 2006, the division shall
13 determine the total cigarette sales in this state in the years
14 2001, 2002, 2003, 2004, and 2005.

15 (c) The division may determine the reasonable accuracy
16 of the information provided in each application and make any
17 adjustments necessary to correct any inaccuracies. Based upon
18 such corrections, the division shall make an initial
19 determination of the percentage to be used to determine the
20 applicant's annual credit. Such determination must be made by
21 October 1, 2006, or as soon as reasonably practicable
22 thereafter.

23 (d) Unless a hearing is requested within the time
24 allowed in subsection (4), an initial determination is binding
25 on the manufacturer.

26 (3) A manufacturer seeking a hearing pursuant to
27 chapter 120 to challenge the division's initial determination
28 must submit a written request for such a hearing to the
29 division within 10 days after such determination. The division
30 shall grant or deny the request within 5 days after receipt
31 and, immediately after granting any such request, shall notify

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1 the Division of Administrative Hearings within the Department
 2 of Management Services. Within 5 days after receiving such
 3 notice, the Division of Administrative Hearings shall assign
 4 an administrative law judge, who shall conduct a hearing
 5 within 14 days, unless the request for hearing is withdrawn. A
 6 credit may not be granted to the manufacturer until the
 7 determination of the division is final and not subject to
 8 appeal. If litigation delays the granting of a credit beyond
 9 the onset of the payment of fees by a manufacturer pursuant to
 10 s. 210.0205, any credit that is determined valid in the final
 11 resolution of that litigation must be awarded for the year of
 12 such onset and for each year thereafter.

13 (4) Credits provided under this section may be used at
 14 any time and may be transferred to other manufacturers of
 15 cigarettes against which the fee is imposed under s. 210.0205.
 16 The division may adopt rules governing the manner of
 17 evidencing any such transfer and may prohibit the use of any
 18 transferred credit until after the division records and
 19 acknowledges the transfer.

20 Section 3. Section 210.0207, Florida Statutes, is
 21 created to read:

22 210.0207 Suspension of fees.--

23 (1) As used in this section, the term "subsequent
 24 participating manufacturer" means a manufacturer that is a
 25 subsequent participating manufacturer as defined by the master
 26 settlement agreement.

27 (2) The fees imposed by s. 210.0205 are suspended and
 28 waived until the January 1 after the termination of the
 29 suspension pursuant to subsection (3).

30 (3) The suspension in subsection (2) terminates when
 31 the division determines that all subsequent participating

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1 manufacturers that provide the information required under s.
 2 210.0205(4) have provided a written acknowledgement that each
 3 such manufacturer is entitled to a credit under the master
 4 settlement agreement which satisfies the requirements of
 5 subsection (4) or have not provided such acknowledgement but
 6 are otherwise entitled to a credit under the master settlement
 7 agreement which satisfies the requirements of subsection (4).
 8 Such determination may be made upon the certification of an
 9 authorized representative of the parties to the master
 10 settlement agreement or upon any other information available
 11 to the division.

12 (4) A credit that reduces a monetary obligation of a
 13 subsequent participating manufacturer under the master
 14 settlement agreement satisfies this subsection if it is equal
 15 to the lesser of:

16 (a) All sums payable by such manufacturer under the
 17 master settlement agreement as a result of the manufacturer's
 18 sales of cigarettes in this state in the absence of such
 19 credit; or

20 (b) The net fees payable by such manufacturer under s.
 21 210.0205.

22 (5) The division shall publish notice of its
 23 termination of a suspension pursuant to subsection (3) within
 24 a reasonable time in the same manner as the division publishes
 25 proposed rules under chapter 120. An action to challenge such
 26 a termination is barred unless initiated within 180 days after
 27 such publication.

28 Section 4. Section 210.0208, Florida Statutes, is
 29 created to read:

30 210.0208 Legislative intent.--The intent of this act
 31 is to:

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1 (1) Reduce market inequities created by the
 2 imposition, by this state and other states, of certain
 3 monetary obligations on some cigarette manufacturers through
 4 settlement agreements while not imposing similar obligations
 5 on other cigarette manufacturers.

6 (2) Deter sellers of tobacco products in this state
 7 from paying fees to other states based upon sales of
 8 cigarettes in this state.

9 (3) Resolve disputes over monetary obligations under
 10 the Attorney General's Settlement Agreement of 1996.

11 Section 5. This act shall take effect upon becoming a
 12 law.

13
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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause

18

19 and insert:

20 A bill to be entitled
 21 An act relating to tobacco marketing; creating
 22 s. 210.0205, F.S.; providing definitions;
 23 imposing a fee on certain cigarettes by certain
 24 manufacturers; providing for adjustment and
 25 collection of the fee by the Division of
 26 Alcoholic Beverages and Tobacco of the
 27 Department of Business and Professional
 28 Regulation; providing for deposit of certain
 29 proceeds of the fee into the Tobacco Settlement
 30 Clearing Trust Fund; providing payment
 31 requirements; authorizing the division to

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1 require certain cigarette manufacturers to
2 provide information concerning prepayment;
3 requiring the division to establish procedures
4 to reimburse manufacturers if the prepaid fee
5 exceeds the actual fee; requiring that certain
6 reports of a stamping agent wholesaler include
7 certain information concerning packages of
8 cigarettes by manufacturer and brand family;
9 authorizing rulemaking by the division;
10 requiring certain cigarette manufacturers to
11 provide certain information to the division
12 before making sales of cigarettes in this
13 state; requiring the cigarette manufacturers
14 subject to the fee to provide the division with
15 monthly certifications of payment of the fee
16 and compliance with s. 210.0205, F.S.;
17 requiring the division to make a directory
18 listing such certifications available on its
19 Internet website and upon request; requiring
20 that cigarettes of manufacturers that have not
21 paid the fee or complied with s. 210.0205,
22 F.S., be treated as cigarettes for which the
23 tax imposed by s. 210.02, F.S., has not been
24 paid; prohibiting, under certain circumstances,
25 a stamping agent wholesaler from stamping,
26 purchasing, or selling certain cigarettes of
27 manufacturers that have not paid the fee or are
28 not included in the division's directory
29 listing; creating s. 210.0206, F.S.; granting
30 certain cigarette manufacturers credits against
31 monetary obligations to this state under a

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1 settlement agreement with this state;
2 specifying the amount of the credits; providing
3 for the assignment to the state of certain
4 unused market exemption credits of certain
5 manufacturers; providing that certain
6 manufacturers are entitled to an annual credit
7 against the fee imposed by s. 210.0205(2),
8 F.S.; specifying the amount of the annual
9 credit; specifying procedures governing the
10 provision of such credits; requiring
11 application for such credit on or before July
12 1, 2006; authorizing the division to correct
13 inaccuracies in the application; requiring that
14 the division make an initial determination
15 regarding the application within a specified
16 time; providing that the division's initial
17 determination is binding if a hearing is not
18 requested; providing procedures governing a
19 request for a hearing and the conduct of a
20 hearing; prohibiting the granting of a credit
21 pending a final determination by the division
22 following the hearing and any appeals;
23 providing for application of the final credit
24 in years prior to such final determination;
25 creating s. 210.0207, F.S.; providing a
26 definition; suspending and waiving the fees
27 imposed on certain manufacturers under s.
28 210.0205, F.S.; providing for termination of
29 the suspension by the division upon a
30 determination concerning the entitlement of
31 certain manufacturers to a credit meeting

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1 certain requirements; specifying the
2 requirements such a credit must meet; requiring
3 the division to publish notice of the
4 termination; barring a challenge to the
5 termination after a certain time; creating s.
6 210.0208, F.S.; providing legislative intent;
7 providing an effective date.
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