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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2009	.	
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The Committee on Judiciary (Haridopolos) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 569.23, Florida Statutes, is amended to read:

569.23 Supersedes bond requirements for tobacco settlement agreement signatories, successors, and affiliates.—

(1) As used in this section, the term "tobacco settlement agreement" means any settlement agreement, as amended, entered into by the state and one or more cigarette manufacturers in



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12 settlement of *State of Florida v. American Tobacco Co.*, No. 95-
13 1466AH (Fla. 15th Cir. Ct.). As used in this section, the term
14 "appellant's proportionate share of liability" means either the
15 total liability for a judgment where there is a single defendant
16 or appellant, and, in cases where there are multiple defendants
17 or appellants, any amount specifically allocated against a
18 particular defendant or appellant in the judgment, and, where
19 liability is not specifically allocated in whole or in part
20 among multiple defendants or appellants, the amount of the
21 unallocated portion of the judgment divided equally among the
22 defendants or appellants.

23 (2) In any civil action involving a signatory, ~~or~~
24 successor, parent, or an affiliate of a signatory to a the
25 tobacco settlement agreement, ~~as defined in s. 215.56005(1)(f),~~
26 the ~~supersedeas appeal~~ bond or other surety to be furnished
27 during the pendency of all appeals or discretionary appellate
28 reviews, including reviews by the United States Supreme Court,
29 of any judgment in such litigation shall be set pursuant to
30 applicable laws or court rules, except that the total cumulative
31 value of all supersedeas bonds or other surety required to stay
32 the execution of the judgment ~~bond for all defendants~~ may not
33 exceed \$100 million for all appellants collectively, regardless
34 of the total value of the judgment.

35 (3) (a) In civil actions against a signatory, successor,
36 parent, or affiliate of a signatory to a tobacco settlement
37 agreement brought by or on behalf of persons who claim or have
38 been determined to be members of a former class action that was
39 decertified in whole or in part, the trial courts shall
40 automatically stay the execution of judgments in any such



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41 actions during the pendency of all appeals or discretionary
42 appellate reviews, including reviews by the United States
43 Supreme Court, upon provision of security required in this
44 subsection. Security shall be provided through the posting with
45 or payment into the registry of the clerk of the Supreme Court,
46 by each appellant individually, of supersedeas bonds, other
47 surety, or cash in an amount based upon or equal to the
48 appellant's proportionate share of liability in all cases
49 pending appeal plus twice the statutory rate of interest on
50 judgments, provided that an individual appellant shall not be
51 required to provide total security for such purposes in excess
52 of the greater of either \$5 million, or, \$100 million multiplied
53 by the appellant's percentage share of all payments to the state
54 of Florida in 2008 under the tobacco settlement agreement.
55 Regardless of the total value or number of the judgments, the
56 total cumulative value of all security required of all
57 appellants to stay the execution of all such judgments under
58 this subsection may not exceed \$100 million for all appellants
59 collectively.

60
61 Upon the provision by any individual appellant of the maximum
62 security required by this subsection the trial courts shall stay
63 the execution of judgments in all other cases covered by this
64 subsection during the pendency of all appeals or discretionary
65 appellate reviews, including reviews by the United States
66 Supreme Court, without requiring any additional supersedeas
67 bonds or other surety except as may be provided below. By
68 operation of law, each appellee whose judgment against an
69 appellant is stayed by operation of this subsection shall be



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70 deemed a co-beneficiary of all security provided by that
71 appellant under this subsection, in the same proportion as the
72 appellee's judgment has to the total amount of judgments against
73 such appellant that are stayed under this subsection.

74 (b) An appellant that has made payments into the registry
75 of the clerk of the Supreme Court pursuant to this subsection
76 may petition the circuit court in any case still pending or the
77 Supreme Court for an order directing the clerk of the Supreme
78 Court to refund any amount so deposited that exceeds the total
79 of the appellant's proportionate share of liability of all
80 unsatisfied judgments then affected by this subsection. Such
81 refund shall be ordered upon a showing that the security
82 provided under this subsection by such appellant is no longer
83 necessary to pay outstanding judgments against the appellant.
84 Prior to acting on such petition, the court petitioned may
85 require proof of service of such petition to all affected
86 parties. The clerk of the Supreme Court shall make any refund so
87 ordered with 60 days of such order.

88 (c) Any security provided by an appellant under this
89 subsection is intended to secure the collection of judgments
90 against that appellant in cases covered by this subsection. No
91 claim may be made against such security unless an appellant does
92 not pay a judgment in a case covered by this subsection within
93 30 days after the judgment becomes final. For purposes of this
94 paragraph, a judgment is final following the completion of all
95 appeals or discretionary appellate reviews, including reviews by
96 the United States Supreme Court. In the event that an appellant
97 does not pay a judgment within such time period:

98 1. Any stay of execution required in favor of such



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99 appellant under this subsection shall be immediately lifted by
100 operation of law, unless a stay is provided pursuant to some
101 other provision of law, rule of court or judicial order; and

102 2. Any judgment creditor against whom a stay of execution
103 of a judgment against the appellant was in effect pursuant to
104 this subsection may petition the trial court or the Supreme
105 Court for an order directing the clerk of the Supreme Court to
106 equitably distribute any cash security provided under this
107 subsection by such appellant or for an order with respect to any
108 bond or other surety making equitable division of the proceeds
109 of such bond or surety. At any time, the clerk of the Supreme
110 Court may interplead any cash security provided by an appellant
111 under this subsection in any circuit court in which a case
112 affected by this subsection is then pending. Such court shall
113 make equitable distribution of such security to appellees whose
114 judgments against such appellant are secured by operation of
115 this subsection.

116 (d) The clerk of the Supreme Court shall collect fees for
117 receipt of deposits under paragraph (a) as authorized by ss.
118 28.231 and 28.24(10) (a). In addition, for as long as any cash
119 remains on deposit with the clerk pursuant to this subsection,
120 the clerk of the Supreme Court shall be entitled to regularly
121 receive as an additional fee, the net investment income earned
122 thereon. The clerk shall utilize the services of the Chief
123 Financial Officer, as needed, for the custody and management of
124 all bonds, other surety or cash posted or deposited with the
125 clerk. All fees collected pursuant to this subsection shall be
126 deposited in the State Courts Revenue Trust Fund for use as
127 specified by law.



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128 (e) On or before October 1, 2009, the Department of Revenue
129 shall provide to the clerk of the Supreme Court a report showing
130 the total tobacco settlement payments received by the state in
131 2008 and the percentage of that total received on behalf of each
132 settling manufacturer. Upon request of any judicial officer
133 administering any case affected by this subsection or of any
134 appellant that has provided security under this subsection, the
135 clerk of the Supreme Court shall certify to the trial court the
136 amount of security provided by a subject appellant and shall
137 certify whether such amount equals the maximum amount required
138 under paragraph (3)(a) determined in reliance upon the report of
139 the Department of Revenue. Any trial court may make such further
140 inquiry as may be necessary to determine the existence of a stay
141 in a particular case. In addition, other evidence of the
142 security provided under this subsection through the clerk of the
143 Supreme Court shall be provided to the clerks of the circuit
144 court in such form as may be directed by the Supreme Court
145 acting in its administrative capacity.

146 (4) ~~(2)~~ Notwithstanding subsections (2) and (3) ~~subsection~~
147 ~~(1)~~, if, after notice and hearing, a plaintiff proves by a
148 preponderance of the evidence that a defendant who posted a
149 supersedeas ~~such~~ bond or other equivalent surety or who made
150 cash payments into the registry of the clerk of the Supreme
151 Court pursuant to subsection (3)(a) is purposefully dissipating
152 assets outside the ordinary course of business to avoid payment
153 of the judgment, the court may enter necessary orders as to that
154 defendant to protect the plaintiff, including an order that the
155 bond or equivalent surety be posted in an amount up to the full
156 amount of the judgment against that defendant.

