

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Bogdanoff offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

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

7 569.23 Supersedeas bond requirements for tobacco
8 settlement agreement signatories, successors, and affiliates.--

9 (1) As used in this section, the term:

10 (a) "Tobacco settlement agreement" means any settlement
11 agreement, as amended, entered into by the state and one or more
12 cigarette manufacturers in settlement of State of Florida v.
13 American Tobacco Co., No. 95-1466AH (Fla. 15th Cir. Ct.).

14 (b) "Appellant's proportionate share of liability" means:

15 1. In cases in which there is a single defendant or
16 appellant, the total liability for a judgment.

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17 2. In cases in which there are multiple defendants or
18 appellants, any amount specifically allocated against a
19 particular defendant or appellant in the judgment.

20 3. In cases in which liability is not specifically
21 allocated in whole or in part among multiple defendants or
22 appellants, the amount of the unallocated portion of the
23 judgment divided equally among the defendants or appellants.

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

36 (3) (a) 1. In civil actions against a signatory or a
37 successor, parent, or affiliate of a signatory to a tobacco
38 settlement agreement brought by or on behalf of persons who
39 claim or have been determined to be members of a former class
40 action that was decertified in whole or in part, the trial
41 courts shall automatically stay the execution of judgments in
42 any such actions during the pendency of all appeals or
43 discretionary appellate reviews, including reviews by the United
44 States Supreme Court, upon provision of security required in

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45 this subsection. Security shall be provided through the posting
46 with or payment into the registry of the Clerk of the Supreme
47 Court, by each appellant individually, of supersedeas bonds,
48 other surety, or cash in an amount based upon or equal to the
49 appellant's proportionate share of liability in all cases
50 pending appeal, plus twice the statutory rate of interest on
51 judgments. However, an individual appellant shall not be
52 required to provide total security for such purposes in excess
53 of \$100 million multiplied by the appellant's percentage share
54 of all payments to the State of Florida in 2008 under the
55 tobacco settlement agreement, or \$5 million, whichever is
56 greater. Regardless of the total value or number of the
57 judgments, the total cumulative value of all security required
58 of all appellants to stay the execution of all such judgments
59 under this subsection may not exceed \$105 million for all
60 appellants collectively.

61 2. Upon the provision by any individual appellant of the
62 maximum security required by this paragraph, the trial courts
63 shall stay the execution of judgments in all other cases covered
64 by this paragraph during the pendency of all appeals or
65 discretionary appellate reviews, including reviews by the United
66 States Supreme Court, without requiring any additional
67 supersedeas bonds or other surety except as may be provided in
68 paragraph (c) and subsection (4).

69 3. By operation of law, each appellee whose judgment
70 against an appellant is stayed by operation of this paragraph
71 shall be deemed a co-beneficiary of all security provided by
72 that appellant under this subsection in the same proportion as

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73 the appellee's judgment has to the total amount of judgments
74 against such appellant that are stayed under this paragraph.

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

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

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101 unless a stay is provided pursuant to some other provision of
102 law, rule of court, or judicial order, and any judgment creditor
103 against whom a stay of execution of a judgment against the
104 appellant was in effect pursuant to this subsection may petition
105 the trial court or the Supreme Court for an order directing the
106 Clerk of the Supreme Court to equitably distribute any cash
107 security provided under this subsection by such appellant, and
108 for an order with respect to any bond or other surety, making
109 equitable division of the proceeds of such bond or surety. At
110 any time, the Clerk of the Supreme Court may interplead any cash
111 security provided by an appellant under this subsection in any
112 circuit court in which a case affected by this subsection is
113 then pending. Such court shall make equitable distribution of
114 such security to appellees whose judgments against such
115 appellant are secured by operation of 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
129 Revenue shall provide to the Clerk of the Supreme Court a report
130 showing the total tobacco settlement payments received by the
131 state in 2008 and the percentage of that total received on
132 behalf of each settling manufacturer. Upon request of any
133 judicial officer administering any case affected by this
134 subsection or of any appellant that has provided security under
135 this subsection, the Clerk of the Supreme Court shall certify to
136 the trial court the amount of security provided by a subject
137 appellant and shall certify whether such amount equals the
138 maximum amount required under paragraph (a) determined in
139 reliance upon the report of the Department of Revenue. Any trial
140 court may make such further inquiry as may be necessary to
141 determine the existence of a stay in a particular case. In
142 addition, other evidence of the security provided under this
143 subsection through the Clerk of the Supreme Court shall be
144 provided to the clerks of the circuit court in such form as may
145 be directed by the Supreme Court acting in its administrative
146 capacity.

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

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156 bond or equivalent surety be posted in an amount up to the full
157 amount of the judgment against that defendant.

158 ~~(5)-(3)~~ This section does not apply to any past, present,
159 or future action brought by the State of Florida against one or
160 more signatories to the settlement agreement.

161 Section 2. This act shall take effect upon becoming a law
162 and shall apply to judgments rendered on or after that date.

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166 **T I T L E A M E N D M E N T**

167 Remove the entire title and insert:

168 A bill to be entitled

169 An act relating to tobacco settlement agreements; amending
170 s. 569.23, F.S.; providing definitions; providing a
171 limitation on the amount of certain supersedeas bonds or
172 other surety that may be ordered; requiring trial courts
173 to stay the execution of certain judgments during
174 appellate proceedings upon the posting of a supersedeas
175 bond or other surety by signatories or parents,
176 successors, or affiliates of signatories to a tobacco
177 settlement agreement applicable to such judgments;
178 providing limitations on the total cumulative value of all
179 supersedeas bonds or other surety; providing that an
180 appellee whose judgment is stayed shall be deemed a co-
181 beneficiary of all security provided by the appellant;
182 providing procedures for the refund of certain payments
183 made by an appellant into the registry of the Clerk of the

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184 Supreme Court; providing that a claim may not be made
185 against certain securities; specifying when a judgment
186 becomes final; providing for the lifting of certain stays;
187 providing for the distribution of securities; requiring
188 the clerk to collect certain fees; providing for
189 management and disposition of funds collected; requiring
190 the Department of Revenue to provide a certain report to
191 the clerk; requiring the Supreme Court to certify to the
192 trial court the amount of security provided by certain
193 subject appellants; permitting a court to order an
194 increase to the surety when a defendant dissipates assets
195 to avoid payment of a judgment; providing applicability;
196 providing an effective date.