



911836

LEGISLATIVE ACTION

|                     |   |       |
|---------------------|---|-------|
| Senate              | . | House |
|                     | . |       |
|                     | . |       |
| Floor: AD/CR        | . |       |
| 05/08/2009 01:20 PM | . |       |
|                     | . |       |

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The Conference Committee on CS/SB 2198, 1st Eng. recommended the following:

1           **Senate Conference Committee Amendment (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

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

8           569.23 Security ~~and~~ requirements for tobacco settlement  
9 agreement signatories, successors, parents, and affiliates.—

10           (1) As used in this section, the term "tobacco settlement  
11 agreement" means any settlement agreement, as amended, entered



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12 into by the state and one or more cigarette manufacturers in  
13 settlement of *State of Florida v. American Tobacco Co.*, No. 95-  
14 1466AH (Fla. 15th Cir. Ct.). As used in this section, the term  
15 "security" means supersedeas bonds, other surety permitted by  
16 Florida law, or cash.

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

28 (3) (a) 1. In civil actions against a signatory, or a  
29 successor, parent, or affiliate of a signatory, to a tobacco  
30 settlement agreement brought by or on behalf of persons who  
31 claim or have been determined to be members of a former class  
32 action that was decertified in whole or in part, the trial  
33 courts shall automatically stay the execution of any judgment in  
34 any such actions during the pendency of all appeals or  
35 discretionary appellate reviews of such judgment in Florida  
36 courts, upon provision of security as required in this  
37 paragraph. All security shall be provided through the posting  
38 with or payment into the registry of the clerk of the Supreme  
39 Court.

40 2. The total amount of security that must be provided for



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41 all appellants collectively with regard to a single judgment is  
42 equal to the lesser of the amount of the judgment to be stayed  
43 or the amount of security per judgment required based on the  
44 following tiers of judgments on appeal in the courts of this  
45 state at the time the security is provided:

| 47 <u>TIER -</u>       | 47 <u>AMOUNT OF</u>    | 47 <u>MAXIMUM</u>       |
|------------------------|------------------------|-------------------------|
| 48 <u>NUMBER</u>       | 48 <u>SECURITY</u>     | 48 <u>TOTAL</u>         |
| 49 <u>OF JUDGMENTS</u> | 49 <u>PER JUDGMENT</u> | 49 <u>ALL SECURITY</u>  |
| 50 <u>1-40</u>         | 50 <u>\$5,000,000</u>  | 50 <u>\$200,000,000</u> |
| 51 <u>41-80</u>        | 51 <u>\$2,500,000</u>  | 51 <u>\$200,000,000</u> |
| 52 <u>81-100</u>       | 52 <u>\$2,000,000</u>  | 52 <u>\$200,000,000</u> |
| 53 <u>101-150</u>      | 53 <u>\$1,333,333</u>  | 53 <u>\$199,999,950</u> |
| 54 <u>151-200</u>      | 54 <u>\$1,000,000</u>  | 54 <u>\$200,000,000</u> |
| 55 <u>201-300</u>      | 55 <u>\$666,667</u>    | 55 <u>\$200,000,100</u> |
| 56 <u>301-500</u>      | 56 <u>\$400,000</u>    | 56 <u>\$200,000,000</u> |
| 57 <u>501-1,000</u>    | 57 <u>\$200,000</u>    | 57 <u>\$200,000,000</u> |
| 58 <u>1,001-2,000</u>  | 58 <u>\$100,000</u>    | 58 <u>\$200,000,000</u> |
| 59 <u>2,001-3,000</u>  | 59 <u>\$66,667</u>     | 59 <u>\$200,001,000</u> |

61 3. In cases having multiple defendants, an individual  
62 appellant shall provide security in proportion to the percent or  
63 amount of liability specifically allocated against that  
64 appellant in the judgment, or, if liability is not specifically  
65 allocated in the judgment, for a share of the unallocated  
66 portion of the judgment determined by dividing the unallocated  
67 portion of the judgment equally among all defendants against  
68 whom the judgment is entered. Once an appellant has provided its  
69 required security with respect to a judgment, that appellant is



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70 entitled to a stay of that judgment regardless of whether other  
71 defendants in that case have provided the security required of  
72 them.

73 4. When the number of judgments on appeal changes so that  
74 the total is within a higher or lower tier, the amount of  
75 security required in each case shall change by operation of law,  
76 upon notice provided by any party to all other parties and upon  
77 deposit within 30 days after notice of any additional security  
78 required hereunder, from the amount of security previously  
79 posted to an amount consistent with the statutory appeal bond  
80 rights prescribed in this paragraph. When the amount of security  
81 on deposit is changed pursuant to this subparagraph, the  
82 security shall be modified as follows:

83 a. If the security on deposit is in the form of a  
84 supersedeas bond or other surety, the appellant shall replace or  
85 supplement that supersedeas bond or other surety with security  
86 in the new amount as required by this paragraph.

87 b. If the security on deposit is in the form of cash, the  
88 clerk of the Supreme Court shall, as appropriate:

89 (I) Upon the request of the appellant and notice to all  
90 appellees affected, refund to the appellant the difference  
91 between the amount of security on deposit and the reduced amount  
92 of security required or hold the difference as a credit against  
93 future security to be posted by that appellant; or

94 (II) Record any additional cash provided by the appellant.

95 (b)1. In any action subject to this subsection, if there is  
96 no appeal or discretionary appellate review pending in a Florida  
97 court and an appellant exercises its right to seek discretionary  
98 appellate review outside of Florida courts, including a review



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99 by the United States Supreme Court, the trial court shall  
100 automatically stay the execution of the judgment in any such  
101 action during the pendency of the appeal, upon provision of  
102 security as required in this paragraph. All security shall be  
103 provided through the posting with or payment into the registry  
104 of the clerk of the Supreme Court of this state.

105 2. The amount of security shall be equal to the lesser of  
106 the amount of the judgment to be stayed or three times the  
107 security required to stay the execution of a judgment during all  
108 appellate review in Florida courts at the time appellate review  
109 is sought under this paragraph.

110 (c) A claim may not be made against the security provided  
111 by an appellant unless an appellant fails to pay a judgment in a  
112 case covered by this subsection within 30 days after the  
113 judgment becomes final. For purposes of this subsection, a  
114 judgment is "final" following the completion of all appeals or  
115 discretionary appellate reviews, including reviews by the United  
116 States Supreme Court. If an appellant fails to pay a judgment  
117 within such time period, the security for that judgment provided  
118 by that appellant shall be available to satisfy the judgment in  
119 favor of the appellee. Upon satisfaction of the judgment in any  
120 case, the clerk of the Supreme Court may refund any security on  
121 deposit with respect to that case to the appellant upon an order  
122 from the trial court confirming satisfaction of the judgment.

123 (d) The clerk of the Supreme Court shall collect fees for  
124 receipt of deposits under this subsection as authorized by ss.  
125 28.231 and 28.24(10) (a). In addition, for as long as any cash  
126 remains on deposit with the clerk pursuant to this subsection,  
127 the clerk of the Supreme Court is entitled to regularly receive



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128 as an additional fee the net investment income earned thereon.  
129 The clerk shall use the services of the Chief Financial Officer,  
130 as needed, for the custody and management of all bonds, other  
131 surety, or cash posted or deposited with the clerk. All fees  
132 collected pursuant to this subsection shall be deposited in the  
133 State Courts Revenue Trust Fund for use as specified by law.

134 (e)1. It is the intent of the Legislature that the clerk of  
135 the Supreme Court maintain a record of the number of appeals in  
136 Florida courts and all security posted with or paid into the  
137 registry of the Supreme Court under this subsection. It is  
138 further the intent of the Legislature that the clerk regularly  
139 update the records to reflect any revisions in the amount of  
140 previously posted or paid security.

141 2. A signatory, or a successor, parent, or affiliate of a  
142 signatory, to a tobacco settlement agreement shall maintain on a  
143 continuing basis an accounting of security provided under this  
144 subsection, including, but not limited to, the specific amount  
145 of security provided with respect to each specific judgment and  
146 the date on which it was provided, the amount and date of any  
147 adjustments upward or downward to security provided and the  
148 basis for the adjustment, and the date of any final disposition  
149 related to security. By July 15 of each year, the entity shall  
150 provide to the clerk of the Supreme Court an updated copy of the  
151 accounting reflecting activity through the immediately preceding  
152 June 30, in a manner prescribed by the Supreme Court. A verified  
153 copy of such accounting shall also be filed in each circuit  
154 court case in which each such judgment was entered.

155 3. By August 1, 2009, a signatory, or a successor, parent,  
156 or affiliate of a signatory, to a tobacco settlement agreement



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157 shall provide to the clerk of the Supreme Court a list of all  
158 civil actions, as of the date the list is provided and  
159 identified by case name and court case number, against the  
160 signatory, or a successor, parent, or affiliate of a signatory,  
161 brought by or on behalf of persons who claim or have been  
162 determined to be members of a former class action that was  
163 decertified in whole or in part. A signatory, or a successor,  
164 parent, or affiliate of a signatory, shall provide to the clerk  
165 the same information on any additional actions filed within 60  
166 days after the additional action is joined.

167 (f) This subsection expires December 31, 2012.

168 (4)-(2) Notwithstanding subsections (2) and (3) ~~subsection~~  
169 ~~(1)~~, if, after notice and hearing, a plaintiff proves by a  
170 preponderance of the evidence that a defendant who posted or  
171 paid security under this section ~~such bond or equivalent surety~~  
172 is purposefully dissipating assets outside the ordinary course  
173 of business to avoid payment of the judgment, the court may  
174 enter necessary orders as to that defendant to protect the  
175 plaintiff, including an order that the security bond ~~or~~  
176 ~~equivalent surety~~ be posted or paid in an amount up to the full  
177 amount of the judgment against that defendant.

178 (5)-(3) This section does not apply to any past, present, or  
179 future action brought by the State of Florida against one or  
180 more signatories to the settlement agreement.

181 Section 2. This act shall take effect upon becoming a law,  
182 and applies to all judgments entered on or after that date.

183  
184 ===== T I T L E A M E N D M E N T =====

185 And the title is amended as follows:



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186 Delete everything before the enacting clause  
187 and insert:

188 A bill to be entitled  
189 An act relating to tobacco settlement agreements;  
190 amending s. 569.23, F.S.; providing definitions;  
191 including a parent of a signatory to a tobacco  
192 settlement agreement within provisions limiting  
193 security required in certain appeals; prescribing the  
194 security necessary to stay execution of judgments  
195 pending appeal in actions by certain former class  
196 action members against signatories to a tobacco  
197 settlement agreement and related entities; prescribing  
198 the form and manner of posting or paying such  
199 security, the level of appeals to which the security  
200 is applicable, the amount of the security based on the  
201 number of appeals, the amount of security in cases  
202 having multiple defendants, and changes in the amount  
203 of security based on changes in the number of appeals;  
204 providing for the stay of execution of a judgment when  
205 a case is appealed to a court outside this state;  
206 prescribing the amount of security necessary to stay  
207 execution of such a judgment; providing conditions  
208 under which claims may be made against security  
209 provided for an appeal; prescribing when a judgment is  
210 final; authorizing the clerk of the Supreme Court to  
211 collect fees related to maintenance of such security;  
212 expressing legislative intent for the clerk of the  
213 Supreme Court to maintain records on the number of  
214 appeals and amount of security; requiring a signatory





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215 to a tobacco settlement agreement and related entities  
216 to maintain and provide to the clerk of the Supreme  
217 Court an accounting of security provided for appeals;  
218 requiring such signatory or related entity to provide  
219 information to the clerk on certain civil actions  
220 filed against the signatory or related entity;  
221 providing for future expiration of security provisions  
222 related to actions by former class action members;  
223 permitting a court to order a defendant that  
224 dissipates assets to avoid payment of a judgment to  
225 increase the appeal security; providing for  
226 applicability; providing an effective date.