

By the Committee on Judiciary; and Senator Haridopolos

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1                   A bill to be entitled  
2           An act relating to tobacco settlement agreements;  
3           amending s. 569.23, F.S.; providing definitions;  
4           requiring trial courts to stay the execution of all  
5           judgments in favor of certain former class action  
6           members during appellate proceedings upon the posting  
7           of a supersedeas bond or other surety by signatories,  
8           parents, successors, or affiliates of a signatory to a  
9           tobacco settlement agreement applicable to all such  
10          judgments; limiting the total cumulative value of all  
11          supersedeas bonds or other surety to a certain amount;  
12          permitting a court to order a specific defendant that  
13          dissipates assets to avoid payment of a judgment to  
14          increase the surety; providing applicability;  
15          providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 569.23, Florida Statutes, is amended to  
20 read:

21           569.23 Supersedeas bond requirements for tobacco settlement  
22 agreement signatories, successors, and affiliates.—

23           (1) As used in this section, the term "tobacco settlement  
24 agreement" means any settlement agreement, as amended, entered  
25 into by the state and one or more cigarette manufacturers in  
26 settlement of *State of Florida v. American Tobacco Co.*, No. 95-  
27 1466AH (Fla. 15th Cir. Ct. 1996). As used in this section, the  
28 term "appellant's proportionate share of liability" means the  
29 total liability for a judgment where there is a single defendant

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30 or appellant, and, in cases where there are multiple defendants  
31 or appellants, any amount specifically allocated against a  
32 particular defendant or appellant in the judgment, and, where  
33 liability is not specifically allocated in whole or in part  
34 among multiple defendants or appellants, the amount of the  
35 unallocated portion of the judgment divided equally among the  
36 defendants or appellants.

37 (2) In any civil action involving a signatory, ~~or~~  
38 successor, parent, or ~~an~~ affiliate of a signatory to a ~~the~~  
39 tobacco settlement agreement, ~~as defined in s. 215.56005(1)(f),~~  
40 the supersedeas appeal bond or other surety to be furnished  
41 during the pendency of all appeals or discretionary appellate  
42 reviews, including reviews by the United States Supreme Court,  
43 of any judgment in such litigation shall be set pursuant to  
44 applicable laws or court rules, except that the total cumulative  
45 value of all supersedeas bonds or other surety required to stay  
46 the execution of the judgment ~~bond for all defendants~~ may not  
47 exceed \$100 million for all appellants collectively, regardless  
48 of the total value of the judgment.

49 (3)(a)1. In civil actions against a signatory, successor,  
50 parent, or affiliate of a signatory to a tobacco settlement  
51 agreement brought by or on behalf of persons who claim or have  
52 been determined to be members of a former class action that was  
53 decertified in whole or in part, the trial courts shall  
54 automatically stay the execution of judgments in any such  
55 actions during the pendency of all appeals or discretionary  
56 appellate reviews, including reviews by the United States  
57 Supreme Court, upon provision of security required in this  
58 subsection. Security shall be provided through the posting with

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59 or payment into the registry of the clerk of the Supreme Court,  
60 by each appellant individually, of supersedeas bonds, other  
61 surety, or cash in an amount based upon or equal to the  
62 appellant's proportionate share of liability in all cases  
63 pending appeal plus twice the statutory rate of interest on  
64 judgments, provided that an individual appellant shall not be  
65 required to provide total security for such purposes in excess  
66 of the greater of either \$5 million, or, \$100 million multiplied  
67 by the appellant's percentage share of all payments to the state  
68 of Florida in 2008 under the tobacco settlement agreement.  
69 Regardless of the total value or number of the judgments, the  
70 total cumulative value of all security required of all  
71 appellants to stay the execution of all such judgments under  
72 this subsection may not exceed \$100 million for all appellants  
73 collectively.

74 2. Upon the provision by any individual appellant of the  
75 maximum security required by this subsection, the trial courts  
76 shall stay the execution of judgments in all other cases covered  
77 by this subsection during the pendency of all appeals or  
78 discretionary appellate reviews, including reviews by the United  
79 States Supreme Court, without requiring any additional  
80 supersedeas bonds or other surety except as may be provided  
81 below. By operation of law, each appellee whose judgment against  
82 an appellant is stayed by operation of this subsection shall be  
83 deemed a co-beneficiary of all security provided by that  
84 appellant under this subsection, in the same proportion as the  
85 appellee's judgment has to the total amount of judgments against  
86 such appellant which are stayed under this subsection.

87 (b) An appellant that has made payments into the registry

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88 of the clerk of the Supreme Court pursuant to this subsection  
89 may petition the circuit court in any case still pending or the  
90 Supreme Court for an order directing the clerk of the Supreme  
91 Court to refund any amount so deposited which exceeds the total  
92 of the appellant's proportionate share of liability of all  
93 unsatisfied judgments then affected by this subsection. Such  
94 refund shall be ordered upon a showing that the security  
95 provided under this subsection by such appellant is no longer  
96 necessary to pay outstanding judgments against the appellant.  
97 Prior to acting on such petition, the court petitioned may  
98 require proof of service of such petition to all affected  
99 parties. The clerk of the Supreme Court shall make any refund so  
100 ordered within 60 days after such order.

101 (c) Any security provided by an appellant under this  
102 subsection is intended to secure the collection of judgments  
103 against that appellant in cases covered by this subsection. No  
104 claim may be made against such security unless an appellant does  
105 not pay a judgment in a case covered by this subsection within  
106 30 days after the judgment becomes final. For purposes of this  
107 paragraph, a judgment is final following the completion of all  
108 appeals or discretionary appellate reviews, including reviews by  
109 the United States Supreme Court. In the event that an appellant  
110 does not pay a judgment within such time period:

111 1. Any stay of execution required in favor of such  
112 appellant under this subsection shall be immediately lifted by  
113 operation of law, unless a stay is provided pursuant to some  
114 other provision of law, rule of court, or judicial order; and

115 2. Any judgment creditor against whom a stay of execution  
116 of a judgment against the appellant was in effect pursuant to

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117 this subsection may petition the trial court or the Supreme  
118 Court for an order directing the clerk of the Supreme Court to  
119 equitably distribute any cash security provided under this  
120 subsection by such appellant or for an order with respect to any  
121 bond or other surety making equitable division of the proceeds  
122 of such bond or surety. At any time, the clerk of the Supreme  
123 Court may interplead any cash security provided by an appellant  
124 under this subsection in any circuit court in which a case  
125 affected by this subsection is then pending. Such court shall  
126 make equitable distribution of such security to appellees whose  
127 judgments against such appellant are secured by operation of  
128 this subsection.

129 (d) The clerk of the Supreme Court shall collect fees for  
130 receipt of deposits under paragraph (a) as authorized by ss.  
131 28.231 and 28.24(10) (a). In addition, for as long as any cash  
132 remains on deposit with the clerk pursuant to this subsection,  
133 the clerk of the Supreme Court shall be entitled to regularly  
134 receive as an additional fee, the net investment income earned  
135 thereon. The clerk shall utilize the services of the Chief  
136 Financial Officer, as needed, for the custody and management of  
137 all bonds, other surety, or cash posted or deposited with the  
138 clerk. All fees collected pursuant to this subsection shall be  
139 deposited in the State Courts Revenue Trust Fund for use as  
140 specified by law.

141 (e) On or before October 1, 2009, the Department of Revenue  
142 shall provide to the clerk of the Supreme Court a report showing  
143 the total tobacco settlement payments received by the state in  
144 2008 and the percentage of that total received on behalf of each  
145 settling manufacturer. Upon request of any judicial officer

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146 administering any case affected by this subsection or of any  
147 appellant that has provided security under this subsection, the  
148 clerk of the Supreme Court shall certify to the trial court the  
149 amount of security provided by a subject appellant and shall  
150 certify whether such amount equals the maximum amount required  
151 under paragraph (a), determined in reliance upon the report of  
152 the Department of Revenue. Any trial court may make such further  
153 inquiry as may be necessary to determine the existence of a stay  
154 in a particular case. In addition, other evidence of the  
155 security provided under this subsection through the clerk of the  
156 Supreme Court shall be provided to the clerks of the circuit  
157 court in such form as may be directed by the Supreme Court  
158 acting in its administrative capacity.

159 (4)-(2) Notwithstanding subsections (2) and (3) subsection  
160 (1), if, after notice and hearing, a plaintiff proves by a  
161 preponderance of the evidence that a defendant who posted a  
162 supersedeas such bond or other equivalent surety or who made  
163 cash payments into the registry of the clerk of the Supreme  
164 Court pursuant to paragraph (3) (a) is purposefully dissipating  
165 assets outside the ordinary course of business to avoid payment  
166 of the judgment, the court may enter necessary orders as to that  
167 defendant to protect the plaintiff, including an order that the  
168 bond or equivalent surety be posted in an amount up to the full  
169 amount of the judgment against that defendant.

170 (5)-(3) This section does not apply to any past, present, or  
171 future action brought by the State of Florida against one or  
172 more signatories to the settlement agreement.

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