

20092198e2

1 A bill to be entitled
2 An act relating to tobacco settlement agreements;
3 amending s. 569.23, F.S.; providing definitions;
4 including a parent of a signatory to a tobacco
5 settlement agreement within provisions limiting
6 security required in certain appeals; prescribing the
7 security necessary to stay execution of judgments
8 pending appeal in actions by certain former class
9 action members against signatories to a tobacco
10 settlement agreement and related entities; prescribing
11 the form and manner of posting or paying such
12 security, the level of appeals to which the security
13 is applicable, the amount of the security based on the
14 number of appeals, the amount of security in cases
15 having multiple defendants, and changes in the amount
16 of security based on changes in the number of appeals;
17 providing for the stay of execution of a judgment when
18 a case is appealed to a court outside this state;
19 prescribing the amount of security necessary to stay
20 execution of such a judgment; providing conditions
21 under which claims may be made against security
22 provided for an appeal; prescribing when a judgment is
23 final; authorizing the clerk of the Supreme Court to
24 collect fees related to maintenance of such security;
25 expressing legislative intent for the clerk of the
26 Supreme Court to maintain records on the number of
27 appeals and amount of security; requiring a signatory
28 to a tobacco settlement agreement and related entities
29 to maintain and provide to the clerk of the Supreme

20092198e2

30 Court an accounting of security provided for appeals;
31 requiring such signatory or related entity to provide
32 information to the clerk on certain civil actions
33 filed against the signatory or related entity;
34 providing for future expiration of security provisions
35 related to actions by former class action members;
36 permitting a court to order a defendant that
37 dissipates assets to avoid payment of a judgment to
38 increase the appeal security; providing for
39 applicability; providing an effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

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

45 569.23 Security bond requirements for tobacco settlement
46 agreement signatories, successors, parents, and affiliates.—

47 (1) As used in this section, the term "tobacco settlement
48 agreement" means any settlement agreement, as amended, entered
49 into by the state and one or more cigarette manufacturers in
50 settlement of State of Florida v. American Tobacco Co., No. 95-
51 1466AH (Fla. 15th Cir. Ct.). As used in this section, the term
52 "security" means supersedeas bonds, other surety permitted by
53 Florida law, or cash.

54 (2) In any civil action involving a signatory, or a
55 successor, parent, or an affiliate of a signatory, to a the
56 tobacco settlement agreement, as defined in s. 215.56005(1)(f),
57 the security appeal bond to be furnished during the pendency of
58 all appeals or discretionary appellate reviews, including

20092198e2

59 reviews by the United States Supreme Court, of any judgment in
 60 such litigation shall be set pursuant to applicable laws or
 61 court rules, except that the total cumulative value of all
 62 security required to stay the execution of the judgment ~~and for~~
 63 ~~all defendants~~ may not exceed \$100 million for all appellants
 64 collectively, regardless of the total value of the judgment.

65 (3) (a) 1. In civil actions against a signatory, or a
 66 successor, parent, or affiliate of a signatory, to a tobacco
 67 settlement agreement brought by or on behalf of persons who
 68 claim or have been determined to be members of a former class
 69 action that was decertified in whole or in part, the trial
 70 courts shall automatically stay the execution of any judgment in
 71 any such actions during the pendency of all appeals or
 72 discretionary appellate reviews of such judgment in Florida
 73 courts, upon provision of security as required in this
 74 paragraph. All security shall be provided through the posting
 75 with or payment into the registry of the clerk of the Supreme
 76 Court.

77 2. The total amount of security that must be provided for
 78 all appellants collectively with regard to a single judgment is
 79 equal to the lesser of the amount of the judgment to be stayed
 80 or the amount of security per judgment required based on the
 81 following tiers of judgments on appeal in the courts of this
 82 state at the time the security is provided:

<u>TIER -</u>	<u>AMOUNT OF</u>	<u>MAXIMUM</u>
<u>NUMBER</u>	<u>SECURITY</u>	<u>TOTAL</u>
<u>OF JUDGMENTS</u>	<u>PER JUDGMENT</u>	<u>ALL SECURITY</u>
<u>1-40</u>	<u>\$5,000,000</u>	<u>\$200,000,000</u>

20092198e2

88	<u>41-80</u>	<u>\$2,500,000</u>	<u>\$200,000,000</u>
89	<u>81-100</u>	<u>\$2,000,000</u>	<u>\$200,000,000</u>
90	<u>101-150</u>	<u>\$1,333,333</u>	<u>\$199,999,950</u>
91	<u>151-200</u>	<u>\$1,000,000</u>	<u>\$200,000,000</u>
92	<u>201-300</u>	<u>\$666,667</u>	<u>\$200,000,100</u>
93	<u>301-500</u>	<u>\$400,000</u>	<u>\$200,000,000</u>
94	<u>501-1,000</u>	<u>\$200,000</u>	<u>\$200,000,000</u>
95	<u>1,001-2,000</u>	<u>\$100,000</u>	<u>\$200,000,000</u>
96	<u>2,001-3,000</u>	<u>\$66,667</u>	<u>\$200,001,000</u>

97

98 3. In cases having multiple defendants, an individual
 99 appellant shall provide security in proportion to the percent or
 100 amount of liability specifically allocated against that
 101 appellant in the judgment, or, if liability is not specifically
 102 allocated in the judgment, for a share of the unallocated
 103 portion of the judgment determined by dividing the unallocated
 104 portion of the judgment equally among all defendants against
 105 whom the judgment is entered. Once an appellant has provided its
 106 required security with respect to a judgment, that appellant is
 107 entitled to a stay of that judgment regardless of whether other
 108 defendants in that case have provided the security required of
 109 them.

110 4. When the number of judgments on appeal changes so that
 111 the total is within a higher or lower tier, the amount of
 112 security required in each case shall change by operation of law,
 113 upon notice provided by any party to all other parties and upon
 114 deposit within 30 days after notice of any additional security
 115 required hereunder, from the amount of security previously
 116 posted to an amount consistent with the statutory appeal bond

20092198e2

117 rights prescribed in this paragraph. When the amount of security
118 on deposit is changed pursuant to this subparagraph, the
119 security shall be modified as follows:

120 a. If the security on deposit is in the form of a
121 supersedeas bond or other surety, the appellant shall replace or
122 supplement that supersedeas bond or other surety with security
123 in the new amount as required by this paragraph.

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

126 (I) Upon the request of the appellant and notice to all
127 appellees affected, refund to the appellant the difference
128 between the amount of security on deposit and the reduced amount
129 of security required or hold the difference as a credit against
130 future security to be posted by that appellant; or

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

132 (b)1. In any action subject to this subsection, if there is
133 no appeal or discretionary appellate review pending in a Florida
134 court and an appellant exercises its right to seek discretionary
135 appellate review outside of Florida courts, including a review
136 by the United States Supreme Court, the trial court shall
137 automatically stay the execution of the judgment in any such
138 action during the pendency of the appeal, upon provision of
139 security as required in this paragraph. All security shall be
140 provided through the posting with or payment into the registry
141 of the clerk of the Supreme Court of this state.

142 2. The amount of security shall be equal to the lesser of
143 the amount of the judgment to be stayed or three times the
144 security required to stay the execution of a judgment during all
145 appellate review in Florida courts at the time appellate review

20092198e2

146 is sought under this paragraph.

147 (c) A claim may not be made against the security provided
148 by an appellant unless an appellant fails to pay a judgment in a
149 case covered by this subsection within 30 days after the
150 judgment becomes final. For purposes of this subsection, a
151 judgment is "final" following the completion of all appeals or
152 discretionary appellate reviews, including reviews by the United
153 States Supreme Court. If an appellant fails to pay a judgment
154 within such time period, the security for that judgment provided
155 by that appellant shall be available to satisfy the judgment in
156 favor of the appellee. Upon satisfaction of the judgment in any
157 case, the clerk of the Supreme Court may refund any security on
158 deposit with respect to that case to the appellant upon an order
159 from the trial court confirming satisfaction of the judgment.

160 (d) The clerk of the Supreme Court shall collect fees for
161 receipt of deposits under this subsection as authorized by ss.
162 28.231 and 28.24(10) (a). In addition, for as long as any cash
163 remains on deposit with the clerk pursuant to this subsection,
164 the clerk of the Supreme Court is entitled to regularly receive
165 as an additional fee the net investment income earned thereon.
166 The clerk shall use the services of the Chief Financial Officer,
167 as needed, for the custody and management of all bonds, other
168 surety, or cash posted or deposited with the clerk. All fees
169 collected pursuant to this subsection shall be deposited in the
170 State Courts Revenue Trust Fund for use as specified by law.

171 (e)1. It is the intent of the Legislature that the clerk of
172 the Supreme Court maintain a record of the number of appeals in
173 Florida courts and all security posted with or paid into the
174 registry of the Supreme Court under this subsection. It is

20092198e2

175 further the intent of the Legislature that the clerk regularly
176 update the records to reflect any revisions in the amount of
177 previously posted or paid security.

178 2. A signatory, or a successor, parent, or affiliate of a
179 signatory, to a tobacco settlement agreement shall maintain on a
180 continuing basis an accounting of security provided under this
181 subsection, including, but not limited to, the specific amount
182 of security provided with respect to each specific judgment and
183 the date on which it was provided, the amount and date of any
184 adjustments upward or downward to security provided and the
185 basis for the adjustment, and the date of any final disposition
186 related to security. By July 15 of each year, the entity shall
187 provide to the clerk of the Supreme Court an updated copy of the
188 accounting reflecting activity through the immediately preceding
189 June 30, in a manner prescribed by the Supreme Court. A verified
190 copy of such accounting shall also be filed in each circuit
191 court case in which each such judgment was entered.

192 3. By August 1, 2009, a signatory, or a successor, parent,
193 or affiliate of a signatory, to a tobacco settlement agreement
194 shall provide to the clerk of the Supreme Court a list of all
195 civil actions, as of the date the list is provided and
196 identified by case name and court case number, against the
197 signatory, or a successor, parent, or affiliate of a signatory,
198 brought by or on behalf of persons who claim or have been
199 determined to be members of a former class action that was
200 decertified in whole or in part. A signatory, or a successor,
201 parent, or affiliate of a signatory, shall provide to the clerk
202 the same information on any additional actions filed within 60
203 days after the additional action is joined.

20092198e2

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

205 (4)~~(2)~~ Notwithstanding subsections (2) and (3) ~~subsection~~
206 ~~(1)~~, if, after notice and hearing, a plaintiff proves by a
207 preponderance of the evidence that a defendant who posted or
208 paid security under this section ~~such bond or equivalent surety~~
209 is purposefully dissipating assets outside the ordinary course
210 of business to avoid payment of the judgment, the court may
211 enter necessary orders as to that defendant to protect the
212 plaintiff, including an order that the security ~~bond or~~
213 ~~equivalent surety~~ be posted or paid in an amount up to the full
214 amount of the judgment against that defendant.

215 (5)~~(3)~~ This section does not apply to any past, present, or
216 future action brought by the State of Florida against one or
217 more signatories to the settlement agreement.

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