

By Senator Altman

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1                   A bill to be entitled  
2           An act relating to cigarette products of nonsettling  
3           manufacturers; creating s. 210.23, F.S.; providing the  
4           purpose of the act; creating s. 210.232, F.S.;  
5           defining terms; creating s. 210.234, F.S.; imposing a  
6           fee on the sale, receipt, purchase, possession,  
7           consumption, handling, distribution, and use of  
8           nonsettling manufacturer cigarettes that are required  
9           to have a stamp affixed or stamp insignia applied to  
10          the package of cigarettes on which tax is otherwise  
11          required to be paid and nonsettling manufacturer  
12          cigarette tobacco products that are subject to the tax  
13          imposed by ch. 210, F.S.; providing that the fee  
14          imposed is in addition to any other privilege,  
15          license, fee, or tax required or imposed by state law;  
16          prescribing methods to affix a stamp or insignia to  
17          the tobacco products; creating s. 210.236, F.S.;  
18          providing the fee rate for nonsettling manufacturers;  
19          providing for the annual increase of fees; creating s.  
20          210.238, F.S.; requiring the Attorney General to post  
21          a directory listing of all settling manufacturers that  
22          have provided accurate certifications of their  
23          products to calculate its payments under the tobacco  
24          settlement agreement for the relevant year on the  
25          Internet website of the Attorney General; providing  
26          that any cigarette or cigarette tobacco product of a  
27          brand family not on the directory list be  
28          presumptively considered a nonsettling manufacturer  
29          product; creating s. 210.240, F.S.; requiring each

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30 dealer, agent, and distributing agent to file a  
31 report; requiring the report to include certain  
32 specified information; creating s. 210.242, F.S.;  
33 requiring the Division of Alcoholic Beverages and  
34 Tobacco of the Department of Business and Professional  
35 Regulation to provide a nonsettling manufacturer with  
36 a report of the fees paid with respect to the  
37 nonsettling manufacturer's cigarettes and cigarette  
38 tobacco products; requiring the division to respond by  
39 a certain date; creating s. 210.245, F.S.; providing  
40 penalties for a nonsettling manufacturer that fails to  
41 pay the mandated fees; creating s. 210.246, F.S.;  
42 providing for application of the act; creating s.  
43 210.248, F.S.; authorizing the division to adopt  
44 rules; providing an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Section 210.23, Florida Statutes, is created to  
49 read:

50 210.23 Purpose.—The purpose of ss. 210.23-210.248 is to:

51 (1) Prevent nonsettling manufacturers from undermining this  
52 state's policy of discouraging underage smoking by offering  
53 cigarettes and cigarette tobacco products at prices that are  
54 substantially below the prices of cigarettes and cigarette  
55 tobacco products of other manufacturers.

56 (2) Protect the tobacco settlement agreement and its  
57 funding, which has been reduced because of the growth of sales  
58 of nonsettling manufacturer cigarettes and cigarette tobacco

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59 products, by recouping for this state revenue that is lost  
60 because of sales by nonsettling manufacturers of cigarettes and  
61 cigarette tobacco products.

62 (3) Provide funding to enforce and administer any  
63 legislation relating to nonsettling manufacturers.

64 (4) Provide funding for any other purpose the Legislature  
65 determines.

66 Section 2. Section 210.232, Florida Statutes, is created to  
67 read:

68 210.232 Definitions.—As used in ss. 210.23-210.248, the  
69 term:

70 (1) "Agent" has the same meaning as in s. 210.01.

71 (2) "Brand family" means each style of cigarettes or  
72 cigarette tobacco products sold under the same trademark and  
73 differentiated from one another by means of additional  
74 modifiers, including "menthol," "lights," "kings," and "100s."  
75 The term includes any style of cigarettes or cigarette tobacco  
76 products that have a brand name, trademark, logo, symbol, motto,  
77 selling message, recognizable pattern of colors, or other  
78 indication of product identification that is identical to,  
79 similar to, or identifiable with a previously known brand of  
80 cigarettes or cigarette tobacco products.

81 (3) "Cigarette" has the same meaning as in s. 210.01.

82 (4) "Cigarette tobacco product" means roll-your-own tobacco  
83 or any tobacco that, because of the tobacco's appearance, type,  
84 packaging, or labeling, is suitable for use in making cigarettes  
85 and is likely to be offered to or purchased by a consumer for  
86 that purpose.

87 (5) "Dealer" has the same meaning as in s. 210.01(5) and

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88 (6).

89 (6) "Division" has the same meaning as in s. 210.01.

90 (7) "Distributing agent" has the same meaning as in s.  
91 210.01.

92 (8) "Distributor" has the same meaning as in s. 210.25.

93 (9) "Manufacturer" means a person who manufactures,  
94 fabricates, or assembles cigarettes or cigarette tobacco  
95 products for sale or distribution. For purposes of ss. 210.23-  
96 210.248, the term includes a person who is the first importer  
97 into the United States of cigarettes or cigarette tobacco  
98 products manufactured outside the United States.

99 (10) "Nonsettling manufacturer" means a manufacturer of  
100 cigarettes or cigarette tobacco products which is not a settling  
101 manufacturer.

102 (11) "Nonsettling manufacturer cigarettes" means cigarettes  
103 that are not manufactured by a settling manufacturer.

104 (12) "Nonsettling manufacturer cigarette tobacco products"  
105 means cigarette tobacco products that are not manufactured by a  
106 settling manufacturer.

107 (13) "Settling manufacturer" means a manufacturer of  
108 cigarettes or cigarette tobacco products which:

109 (a) Signed the tobacco settlement agreement; or

110 (b) Has voluntarily entered into an agreement with this  
111 state, approved by the Attorney General, agreeing to terms  
112 similar to those contained in the tobacco settlement agreement,  
113 including making annual payments to the state with respect to  
114 the sale, receipt, purchase, possession, consumption, handling,  
115 distribution, and use in this state of its cigarettes and  
116 cigarette tobacco products equal to at least the amount of the

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117 fee that would have been due on such cigarettes and cigarette  
118 tobacco products under ss. 210.23-210.248 for the relevant year  
119 if the manufacturer were a nonsettling manufacturer.

120 (14) "Settling manufacturer cigarettes" means cigarettes of  
121 a brand family that a settling manufacturer certifies under s.  
122 210.238 is to be deemed its brand family for purposes of  
123 calculating that settling manufacturer's payments under the  
124 tobacco settlement agreement or other agreement described in  
125 paragraph (13) (b) for the relevant year, in the volume and  
126 shares determined under the tobacco settlement agreement or such  
127 other agreement.

128 (15) "Settling manufacturer cigarette tobacco products"  
129 means cigarette tobacco products of a brand family that a  
130 settling manufacturer certifies pursuant to s. 210.238 is deemed  
131 its brand family for purposes of calculating that settling  
132 manufacturer's payments under the tobacco settlement agreement  
133 or other agreement described in subsection (13) for the relevant  
134 year, in the volume and shares determined under the tobacco  
135 settlement agreement or such other agreement.

136 (16) "Tobacco settlement agreement" means the settlement  
137 agreement entered into on August 25, 1997, by this state and  
138 settling manufacturers in the settlement of *State of Florida v.*  
139 *American Tobacco Co.*, No. 95-1466AH (Fla. 15th Cir. Ct. 1996).

140 Section 3. Section 210.234, Florida Statutes, is created to  
141 read:

142 210.234 Fee imposed.—

143 (1) A fee is imposed on the sale, receipt, purchase,  
144 possession, consumption, handling, distribution, and use in this  
145 state, of:

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146 (a) Nonsettling manufacturer cigarettes that are required  
147 to have a stamp affixed or stamp insignia applied to a package  
148 of those cigarettes under this chapter or on which tax is  
149 otherwise required to be paid under this chapter; and

150 (b) Nonsettling manufacturer cigarette tobacco products  
151 that are subject to the tax imposed by s. 210.30.

152 (2) The fee imposed by this section does not apply to  
153 cigarettes or cigarette tobacco products that are included in  
154 calculating payments due to be made by a settling manufacturer  
155 under the tobacco settlement agreement or other agreement  
156 described in s. 210.232(13).

157 (3) The fee imposed by this section is in addition to any  
158 other privilege, license, fee, or tax required or imposed by  
159 state law.

160 (4) The fee imposed by ss. 210.23-210.248 shall be  
161 collected from distributors, dealers, agents, and distributing  
162 agents of nonsettling manufacturer cigarettes or nonsettling  
163 manufacturer cigarette tobacco products to which the fee applies  
164 or from other persons or entities from whom the tax imposed by  
165 this chapter on such nonsettling manufacturer cigarettes or  
166 nonsettling manufacturer cigarette tobacco products may be  
167 collected under this chapter and in the manner provided by this  
168 chapter. The provisions of ss. 210.01, 210.02, 210.021, 210.03,  
169 210.04, 210.05, 210.06, 210.07, 210.08, 210.09, 210.10, 210.11,  
170 210.12, 210.13, 210.14, 210.15, 210.16, 210.161, 210.18,  
171 210.181, 210.19, 210.20, 210.22, 210.25, 210.30, 210.31, 210.35,  
172 210.40, 210.50, 210.55, 210.60, 210.65, 210.67, 210.70, and  
173 210.75, so far as lawful or practicable, apply to the fee  
174 imposed by ss. 210.23-210.248 and to the collection thereof as

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175 if fully set out in ss. 210.23-210.248. However, this subsection  
176 does not apply if it conflicts with any provision of ss. 210.23-  
177 210.248.

178 (5) With respect to nonsettling manufacturer cigarettes,  
179 the division shall prescribe, prepare, and furnish stamps of  
180 such denominations and quantities as may be necessary for the  
181 payment of the fee imposed by ss. 210.23-210.248, and may also  
182 permit the fee to be paid through the use of a stamp insignia to  
183 be applied by metering machines. Such stamps or stamp insignia  
184 are required and shall be sold, affixed, and administered in the  
185 same manner as the stamps and stamp insignia that are  
186 prescribed, prepared, and furnished for the taxes imposed  
187 pursuant to other provisions of this chapter.

188 (6) With respect to nonsettling manufacturer cigarettes,  
189 the collection allowance granted pursuant to s. 210.05(3)(a)  
190 shall be increased to reflect a discount of 2 percent of the par  
191 value of any amount of stamps purchased during any fiscal year  
192 from July 1 through June 30 of the following fiscal year, with  
193 the discount computed upon the basis of 24 cents per pack for  
194 stamps used to reflect payment of the tax and 40 cents per pack  
195 for stamps used to reflect payment of the fee. For nonsettling  
196 manufacture cigarette tobacco products, the collection allowance  
197 shall be as specified in s. 210.55(7).

198 Section 4. Section 210.236, Florida Statutes, is created to  
199 read:

200 210.236 Rate of fee.—

201 (1) Except as provided by subsection (2), the fee is  
202 imposed at the rate of 2 cents for:

203 (a) Each nonsettling manufacturer cigarette; and

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204       (b) Each 0.09 ounce of nonsettling manufacturer cigarette  
205 tobacco product.

206       (2) On January 31 of each year, the division shall increase  
207 the rate of the fee prescribed by subsection (1) by the greater  
208 of:

209       (a) Three percent; or

210       (b) The percentage increase in the most recent annual  
211 revised Consumer Price Index for All Urban Consumers, as  
212 published by the Bureau of Labor Statistics of the United States  
213 Department of Labor.

214       Section 5. Section 210.238, Florida Statutes, is created to  
215 read:

216       210.238 Settling manufacturer certification and list.-

217       (1) By July 1, 2010, and annually thereafter not later than  
218 the 30th day of April in each year, each settling manufacturer  
219 shall certify to the Attorney General, on a form prescribed by  
220 the Attorney General, the names of the brand families that are  
221 to be deemed its cigarettes or cigarette tobacco products for  
222 purposes of calculating its payments under the tobacco  
223 settlement agreement or other agreement described in s.  
224 210.232(13) for the relevant year, in the volume and shares  
225 determined under the tobacco settlement agreement or such other  
226 agreement. Each settling manufacturer shall update such  
227 information in the event of any change, within 30 calendar days  
228 after the date of the change.

229       (2) By July 15, 2010, the Attorney General shall develop,  
230 maintain, and publish on its Internet website a directory  
231 listing of all settling manufacturers that have provided  
232 accurate certifications under subsection (1). The directory



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233 shall list the brand families of such settling manufacturers  
234 included in such certifications. The Attorney General shall  
235 update the directory as necessary in order to add or remove a  
236 manufacturer or brand family and keep the directory in  
237 conformity with the requirements of ss. 210.23-210.248.

238 (3) The Attorney General shall provide the list to each  
239 dealer, agent, or distributing agent authorized to affix stamps  
240 under this chapter, to each distributor, and to any other person  
241 upon request.

242 (4) The Attorney General shall make the information  
243 contained in certifications under this section available to the  
244 division.

245 (5) Cigarettes and cigarette tobacco products of a brand  
246 family that is not on the directory list shall be presumptively  
247 considered nonsettling manufacturer cigarettes or nonsettling  
248 manufacturer cigarette tobacco products to which the fee imposed  
249 by ss. 210.23-210.248 applies.

250 Section 6. Section 210.240, Florida Statutes, is created to  
251 read:

252 210.240 Reports.-

253 (1) Each dealer, agent, and distributing agent required to  
254 file a report under s. 210.05 or s. 210.09, and each distributor  
255 required to file a return or return under s. 210.55 or s.  
256 210.60, shall, in addition to the information required by those  
257 sections, include in that required report or return each month,  
258 as appropriate:

259 (a) The number of individual nonsettling manufacturer  
260 cigarettes in packages on which the dealer, agent, distributing  
261 agent, or distributor affixed or was required to affix a stamp

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262 or stamp insignia by the use of a metering machine during the  
263 preceding month;

264 (b) The quantity of nonsettling manufacturer cigarette  
265 tobacco product sold or otherwise distributed in this state by  
266 the dealer, agent, distributing agent, or distributor during the  
267 preceding month;

268 (c) The amount of the fee imposed by ss. 210.23-210.248  
269 paid on cigarettes and cigarette tobacco products described in  
270 paragraphs (a) and (b); and

271 (d) Any other information that the division considers  
272 necessary or appropriate to determine the amount of the fee  
273 imposed by ss. 210.23-210.248, to enforce ss. 210.23-210.248, or  
274 to provide the reports showing fees paid for nonsettling  
275 manufacturer cigarette and cigarette tobacco products as  
276 required by s. 210.242.

277 (2) The information required by paragraphs (1)(a)-(c) must  
278 be itemized for each place of business and by manufacturer and  
279 brand family.

280 (3) The requirement to report information under this  
281 section shall be enforced in the same manner as the requirement  
282 to deliver to or file with the division a report or return  
283 required under this chapter.

284 Section 7. Section 210.242, Florida Statutes, is created to  
285 read:

286 210.242 Division report to nonsettling manufacturers.-

287 (1) By December 15 of each year, a nonsettling manufacturer  
288 may request, on a form prescribed by the division, that the  
289 division provide the nonsettling manufacturer with a report of  
290 the fees paid under ss. 210.23-210.248 with respect to the

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291 nonsettling manufacturer's cigarettes and cigarette tobacco  
292 products during that year. In the request, the nonsettling  
293 manufacturer shall identify its brand families of cigarettes and  
294 cigarette tobacco products.

295 (2) On or before January 15 of the year following the year  
296 during which each request described in subsection (1) is made,  
297 the division shall provide the report to each nonsettling  
298 manufacturer that makes a timely request. The report shall  
299 contain the amount of fees reported to the division by dealers,  
300 agents, distributing agents, and distributors in reports under  
301 s. 210.240 as having been paid in the year during which the  
302 request is made with respect to the brand families of cigarettes  
303 and cigarette tobacco products identified by the nonsettling  
304 manufacturer in its request. If the division receives a request  
305 under subsection (1) from more than one nonsettling manufacturer  
306 that identifies any of the same brand families of cigarettes and  
307 cigarette tobacco products, the division shall note that more  
308 than one nonsettling manufacturer has identified the brand  
309 family or families, and list the brand families at issue on the  
310 report provided to each of the nonsettling manufacturers that  
311 identified the brand family or families at issue. The division  
312 shall update or revise reports in light of additional or changed  
313 information or as otherwise necessary to keep the reports in  
314 conformity with the requirements of ss. 210.23-210.248.

315 Section 8. Section 210.245, Florida Statutes, is created to  
316 read:

317 210.245 Penalties for noncompliance.—Nonsettling  
318 manufacturer cigarettes and nonsettling manufacturer cigarette  
319 tobacco products subject to any fee imposed by ss. 210.23-

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320 210.248, but upon which the fee has not been paid, shall be  
321 treated as cigarettes or tobacco products for which the tax  
322 assessed by this chapter has not been paid, and all persons  
323 selling, receiving, purchasing, possessing, consuming, handling,  
324 distributing, or using such cigarettes or cigarette tobacco  
325 products are subject to all penalties imposed by this chapter  
326 for violations of this chapter.

327 Section 9. Section 210.246, Florida Statutes, is created to  
328 read:

329 210.246 Application.—Sections 210.23-210.248 apply without  
330 regard to s. 210.06(5), or any other law that might be read to  
331 create an exemption for interstate sales.

332 Section 10. Section 210.248, Florida Statutes, is created  
333 to read:

334 210.248 General powers of the Division of Alcoholic  
335 Beverages and Tobacco.—The Division of Alcoholic Beverages and  
336 Tobacco may adopt rules to administer ss. 210.23-210.248,  
337 including rules that address the imposition, collection, and  
338 enforcement of the fees and required reporting.

339 Section 11. This act shall take effect July 1, 2009.