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1 A bill to be entitled
2 An act relating to tobacco settlement agreements; amending
3 s. 569.23, F.S.; providing definitions; providing a
4 limitation on the amount of certain supersedeas bonds or
5 other surety that may be ordered; requiring trial courts
6 to stay the execution of certain judgments during
7 appellate proceedings upon the posting of a supersedeas
8 bond or other surety by signatories or parents,
9 successors, or affiliates of signatories to a tobacco
10 settlement agreement applicable to such judgments;
11 providing limitations on the total cumulative value of all
12 supersedeas bonds or other surety; providing that an
13 appellee whose judgment is stayed shall be deemed a co-
14 beneficiary of all security provided by the appellant;
15 providing procedures for the refund of certain payments
16 made by an appellant into the registry of the Clerk of the
17 Supreme Court; providing that a claim may not be made
18 against certain securities; specifying when a judgment
19 becomes final; providing for the lifting of certain stays;
20 providing for the distribution of securities; requiring
21 the clerk to collect certain fees; providing for
22 management and disposition of funds collected; requiring
23 the Department of Revenue to provide a certain report to
24 the clerk; requiring the Supreme Court to certify to the
25 trial court the amount of security provided by certain
26 subject appellants; permitting a court to order an
27 increase to the surety when a defendant dissipates assets

28 to avoid payment of a judgment; providing applicability;
 29 providing an effective date.

31 Be It Enacted by the Legislature of the State of Florida:

33 Section 1. Section 569.23, Florida Statutes, is amended to
 34 read:

35 569.23 Supersedeas bond requirements for tobacco
 36 settlement agreement signatories, successors, and affiliates.--

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

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

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

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

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

48 3. In cases in which liability is not specifically
 49 allocated in whole or in part among multiple defendants or
 50 appellants, the amount of the unallocated portion of the
 51 judgment divided equally among the defendants or appellants.

52 (2)(1) In any civil action involving a signatory or a
 53 successor, parent, or an affiliate of a signatory to the tobacco
 54 settlement agreement, ~~as defined in s. 215.56005(1)(f), the~~
 55 supersedeas appeal bond or other surety to be furnished during

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56 the pendency of all appeals or discretionary appellate reviews,
57 including reviews by the United States Supreme Court, of any
58 judgment in such litigation shall be set pursuant to applicable
59 laws or court rules, except that the total cumulative value of
60 all supersedeas bonds or other surety required to stay the
61 execution of the judgment ~~bond for all defendants~~ may not exceed
62 \$100 million for all appellants collectively, regardless of the
63 total value of the judgment.

64 (3) (a) 1. In civil actions against a signatory or a
65 successor, parent, or affiliate of a signatory to a tobacco
66 settlement agreement brought by or on behalf of persons who
67 claim or have been determined to be members of a former class
68 action that was decertified in whole or in part, the trial
69 courts shall automatically stay the execution of judgments in
70 any such actions during the pendency of all appeals or
71 discretionary appellate reviews, including reviews by the United
72 States Supreme Court, upon provision of security required in
73 this subsection. Security shall be provided through the posting
74 with or payment into the registry of the Clerk of the Supreme
75 Court, by each appellant individually, of supersedeas bonds,
76 other surety, or cash in an amount based upon or equal to the
77 appellant's proportionate share of liability in all cases
78 pending appeal, plus twice the statutory rate of interest on
79 judgments. However, an individual appellant shall not be
80 required to provide total security for such purposes in excess
81 of \$100 million multiplied by the appellant's percentage share
82 of all payments to the State of Florida in 2008 under the
83 tobacco settlement agreement, or \$5 million, whichever is

84 greater. Regardless of the total value or number of the
85 judgments, the total cumulative value of all security required
86 of all appellants to stay the execution of all such judgments
87 under this subsection may not exceed \$105 million for all
88 appellants collectively.

89 2. Upon the provision by any individual appellant of the
90 maximum security required by this paragraph, the trial courts
91 shall stay the execution of judgments in all other cases covered
92 by this paragraph during the pendency of all appeals or
93 discretionary appellate reviews, including reviews by the United
94 States Supreme Court, without requiring any additional
95 supersedeas bonds or other surety except as may be provided in
96 paragraph (c) and subsection (4).

97 3. By operation of law, each appellee whose judgment
98 against an appellant is stayed by operation of this paragraph
99 shall be deemed a co-beneficiary of all security provided by
100 that appellant under this subsection in the same proportion as
101 the appellee's judgment has to the total amount of judgments
102 against such appellant that are stayed under this paragraph.

103 (b) An appellant that has made payments into the registry
104 of the Clerk of the Supreme Court pursuant to this subsection
105 may petition the circuit court in any case still pending or the
106 Supreme Court for an order directing the Clerk of the Supreme
107 Court to refund any amount so deposited that exceeds the total
108 of the appellant's proportionate share of liability of all
109 unsatisfied judgments then affected by this subsection. Such
110 refund shall be ordered upon a showing that the security
111 provided under this subsection by such appellant is no longer

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112 necessary to pay outstanding judgments against the appellant.
113 Prior to acting on such petition, the court petitioned may
114 require proof of service of such petition to all affected
115 parties. The Clerk of the Supreme Court shall make any refund so
116 ordered within 60 days after such order.

117 (c) Any security provided by an appellant under this
118 subsection is intended to secure the collection of judgments
119 against that appellant in cases covered by this subsection. No
120 claim may be made against such security unless an appellant does
121 not pay a judgment in a case covered by this subsection within
122 30 days after the judgment becomes final. For purposes of this
123 paragraph, a judgment is final following the completion of all
124 appeals or discretionary appellate reviews, including reviews by
125 the United States Supreme Court. In the event that an appellant
126 does not pay a judgment within such time period, any stay of
127 execution required in favor of such appellant under this
128 subsection shall be immediately lifted by operation of law,
129 unless a stay is provided pursuant to some other provision of
130 law, rule of court, or judicial order, and any judgment creditor
131 against whom a stay of execution of a judgment against the
132 appellant was in effect pursuant to this subsection may petition
133 the trial court or the Supreme Court for an order directing the
134 Clerk of the Supreme Court to equitably distribute any cash
135 security provided under this subsection by such appellant, and
136 for an order with respect to any bond or other surety, making
137 equitable division of the proceeds of such bond or surety. At
138 any time, the Clerk of the Supreme Court may interplead any cash
139 security provided by an appellant under this subsection in any

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140 circuit court in which a case affected by this subsection is
141 then pending. Such court shall make equitable distribution of
142 such security to appellees whose judgments against such
143 appellant are secured by operation of this subsection.

144 (d) The Clerk of the Supreme Court shall collect fees for
145 receipt of deposits under paragraph (a) as authorized by ss.
146 28.231 and 28.24(10) (a). In addition, for as long as any cash
147 remains on deposit with the clerk pursuant to this subsection,
148 the Clerk of the Supreme Court shall be entitled to regularly
149 receive as an additional fee the net investment income earned
150 thereon. The clerk shall utilize the services of the Chief
151 Financial Officer, as needed, for the custody and management of
152 all bonds, other surety, or cash posted or deposited with the
153 clerk. All fees collected pursuant to this subsection shall be
154 deposited in the State Courts Revenue Trust Fund for use as
155 specified by law.

156 (e) On or before October 1, 2009, the Department of
157 Revenue shall provide to the Clerk of the Supreme Court a report
158 showing the total tobacco settlement payments received by the
159 state in 2008 and the percentage of that total received on
160 behalf of each settling manufacturer. Upon request of any
161 judicial officer administering any case affected by this
162 subsection or of any appellant that has provided security under
163 this subsection, the Clerk of the Supreme Court shall certify to
164 the trial court the amount of security provided by a subject
165 appellant and shall certify whether such amount equals the
166 maximum amount required under paragraph (a) determined in
167 reliance upon the report of the Department of Revenue. Any trial

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168 court may make such further inquiry as may be necessary to
169 determine the existence of a stay in a particular case. In
170 addition, other evidence of the security provided under this
171 subsection through the Clerk of the Supreme Court shall be
172 provided to the clerks of the circuit court in such form as may
173 be directed by the Supreme Court acting in its administrative
174 capacity.

175 (4)-(2) Notwithstanding subsections (2) and (3) subsection
176 (1), if, after notice and hearing, a plaintiff proves by a
177 preponderance of the evidence that a defendant who posted a
178 supersedeas such bond or other equivalent surety or who made
179 cash payments into the registry of the Clerk of the Supreme
180 Court pursuant to paragraph (3) (a) is purposefully dissipating
181 assets outside the ordinary course of business to avoid payment
182 of the judgment, the court may enter necessary orders as to that
183 defendant to protect the plaintiff, including an order that the
184 bond or equivalent surety be posted in an amount up to the full
185 amount of the judgment against that defendant.

186 (5)-(3) This section does not apply to any past, present,
187 or future action brought by the State of Florida against one or
188 more signatories to the settlement agreement.

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