

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; providing that the fee imposed is
12 in addition to any other privilege, license, fee, or
13 tax required or imposed by state law; prescribing
14 methods to affix a stamp or insignia to the tobacco
15 products; creating s. 210.236, F.S.; providing the fee
16 rate for nonsettling manufacturers; creating s.
17 210.238, F.S.; requiring the Division of Alcoholic
18 Beverages and Tobacco of the Department of Business
19 and Professional Regulation to post a directory
20 listing of all settling manufacturers that have
21 provided accurate certifications of their products to
22 calculate its payments under the tobacco settlement
23 agreement for the relevant year on the Internet
24 website of the division; providing that any cigarette
25 of a brand family not on the directory list be
26 presumptively considered a nonsettling manufacturer
27 product; creating s. 210.240, F.S.; requiring each
28 dealer, agent, and distributing agent to file a
29 report; requiring the report to include certain

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30 specified information; creating s. 210.245, F.S.;

31 providing penalties for a nonsettling manufacturer

32 that fails to pay the mandated fees; creating s.

33 210.246, F.S.; providing for application of the act;

34 creating s. 210.248, F.S.; authorizing the division to

35 adopt rules; providing an effective date.

36

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

38

39 Section 1. Section 210.23, Florida Statutes, is created to

40 read:

41 210.23 Purpose.—The purpose of ss. 210.23-210.248 is to:

42 (1) Prevent nonsettling manufacturers from undermining this

43 state's policy of discouraging underage smoking by offering

44 cigarettes and cigarette tobacco products at prices that are

45 substantially below the prices of cigarettes of other

46 manufacturers.

47 (2) Protect the tobacco settlement agreement and its

48 funding, which has been reduced because of the growth of sales

49 of nonsettling manufacturer cigarettes by recouping for this

50 state revenue that is lost because of sales of cigarettes by

51 nonsettling manufacturers of cigarettes.

52 (3) Provide funding to enforce and administer any

53 legislation relating to nonsettling manufacturers.

54 (4) Provide funding for any other purpose the Legislature

55 determines.

56 Section 2. Section 210.232, Florida Statutes, is created to

57 read:

58 210.232 Definitions.—As used in ss. 210.23-210.248, the

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59 term:

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

61 (2) "Brand family" means each style of cigarettes sold
62 under a common brand name, trademark, logo, symbol, motto,
63 selling message, recognizable pattern of colors, or other
64 indication of production identification.

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

66 (4) "Dealer" has the same meaning as in s. 210.01(5) and
67 (6).

68 (5) "Division" has the same meaning as in s. 210.01.

69 (6) "Distributing agent" has the same meaning as in s.
70 210.01.

71 (7) "Distributor" has the same meaning as in s. 210.25.

72 (8) "Manufacturer" means a person who manufactures,
73 fabricates, or assembles cigarettes or cigarette tobacco
74 products for sale or distribution. For purposes of ss. 210.23-
75 210.248, the term includes a person who is the first importer
76 into the United States of cigarettes manufactured outside the
77 United States.

78 (9) "Nonsettling manufacturer" means a manufacturer of
79 cigarettes which is not a settling manufacturer.

80 (10) "Nonsettling manufacturer cigarettes" means cigarettes
81 that are not manufactured by a settling manufacturer.

82 (11) "Settling manufacturer" means a manufacturer of
83 cigarettes that:

84 (a) Signed one of the tobacco settlement agreements before
85 July 1, 2008; or

86 (b) Has voluntarily entered into an agreement with this
87 state, approved by the division, agreeing to terms similar to

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88 those contained in the tobacco settlement agreement described in
89 paragraph (13) (a), including making annual payments to the state
90 with respect to the sale, receipt, purchase, possession,
91 consumption, handling, distribution, and use in this state of
92 its cigarettes equal to at least the amount of the fee that
93 would have been due on such cigarettes under ss. 210.23-210.248
94 for the relevant year if the manufacturer were a nonsettling
95 manufacturer.

96 (12) "Settling manufacturer cigarettes" means cigarettes of
97 a brand family that a settling manufacturer certifies under s.
98 210.238 is to be deemed its brand family for purposes of
99 calculating that settling manufacturer's payments under the
100 tobacco settlement agreement or other agreement described in
101 paragraph (11) (b) for the relevant year, including for purposes
102 of calculating any payment obligations of that settling
103 manufacturer under that agreement, or any other cigarettes that
104 are included in calculating payments due to be made by a
105 settling manufacturer under the tobacco settlement agreement
106 described in paragraph (13) (a) or other agreement described in
107 paragraph (11) (b).

108 (13) "Tobacco settlement agreement" means:

109 (a) The settlement agreement entered into on August 25,
110 1997, in settlement of *State of Florida v. American Tobacco Co.*,
111 No. 95-1466AH (Fla. 15th Cir. Ct. 1996), and under which the
112 settling manufacturer undertook payment obligations to the
113 state; or

114 (b) The settlement agreement entered into on March 15,
115 1996, in settlement of *State of Florida v. American Tobacco Co.*,
116 No. 95-1466AH (Fla. 15th Cir. Ct. 1996).

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117 Section 3. Section 210.234, Florida Statutes, is created to
118 read:

119 210.234 Fee imposed.—

120 (1) A fee is imposed on the sale, receipt, purchase,
121 possession, consumption, handling, distribution, and use in this
122 state, of nonsettling manufacturer cigarettes that are required
123 to have a stamp affixed or stamp insignia applied to a package
124 of those cigarettes under this chapter or on which tax is
125 otherwise required to be paid under this chapter.

126 (2) The fee imposed by this section does not apply to
127 cigarettes made by a settling manufacturer.

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

131 (4) The fee imposed by ss. 210.23-210.248 shall be
132 collected from distributors, dealers, agents, and distributing
133 agents of nonsettling manufacturer cigarettes or from other
134 persons or entities from whom the tax imposed by this chapter on
135 such nonsettling manufacturer cigarettes may be collected under
136 this chapter and in the manner provided by this chapter. The
137 provisions of ss. 210.01, 210.02, 210.021, 210.03, 210.04,
138 210.05, 210.06, 210.07, 210.08, 210.09, 210.10, 210.11, 210.12,
139 210.13, 210.14, 210.15, 210.16, 210.161, 210.18, 210.181,
140 210.19, 210.20, 210.22, 210.25, 210.30, 210.31, 210.35, 210.40,
141 210.50, 210.55, 210.60, 210.65, 210.67, 210.70, and 210.75, so
142 far as lawful or practicable, apply to the fee imposed by ss.
143 210.23-210.248 and to the collection thereof as if fully set out
144 in ss. 210.23-210.248. However, any one or more sections may not
145 apply to the extent the section conflicts with ss. 210.23-

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146 210.248.

147 (5) With respect to nonsettling manufacturer cigarettes,
148 the division shall prescribe, prepare, and furnish stamps of
149 such denominations and quantities as may be necessary for the
150 payment of the fee imposed by ss. 210.23-210.248, and may also
151 permit the fee to be paid through the use of a stamp insignia to
152 be applied by metering machines. Such stamps or stamp insignia
153 are required and shall be sold, affixed, and administered in the
154 same manner as the stamps and stamp insignia that are
155 prescribed, prepared, and furnished for the taxes imposed
156 pursuant to other provisions of this chapter. The division may
157 prescribe that payment of the fee imposed by ss. 210.23-210.248
158 and the tax imposed by s. 210.30 shall be by way of a single
159 stamp or stamp insignia whose value shall be the combined value
160 of such fee and tax, and which shall be identifiable with such
161 markings or colorings as may be necessary to distinguish the
162 stamp or stamp insignia from the stamp or insignia used on
163 cigarette packages not subject to the fee imposed by ss. 210.23-
164 210.248.

165 Section 4. Section 210.236, Florida Statutes, is created to
166 read:

167 210.236 Rate of fee.—A fee is imposed at the rate of 2
168 cents for each nonsettling manufacturer cigarette.

169 Section 5. Section 210.238, Florida Statutes, is created to
170 read:

171 210.238 Settling manufacturer certification and list.—

172 (1) By July 1, 2010, and annually thereafter not later than
173 the 30th day of April in each year, each settling manufacturer
174 shall certify to the Attorney General, on a form prescribed by

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175 the Attorney General, the names of the brand families that are
176 to be deemed its cigarettes for purposes its tobacco settlement
177 agreement or other agreement described in s. 210.232(11)(b) for
178 the relevant year, including for purposes of calculating any
179 payment obligations of that settling manufacturer under that
180 agreement in the volume and shares determined under agreement. A
181 settling manufacturer may not include a brand family in such
182 certification if it does not deem sales of cigarettes of that
183 brand family in this state to be its cigarettes for purposes of
184 the master settlement agreement between 52 states and
185 territories and participating cigarette manufacturers. Each
186 settling manufacturer shall update such information in the event
187 of any change, within 30 calendar days after the date of the
188 change.

189 (2) By July 15, 2010, the division shall develop, maintain,
190 and publish on its Internet website a directory listing of all
191 settling manufacturers that have provided accurate
192 certifications under subsection (1). The directory shall list
193 the brand families of such settling manufacturers included in
194 such certifications. The division shall update the directory as
195 necessary in order to add or remove a manufacturer or brand
196 family and keep the directory in conformity with the
197 requirements of ss. 210.23-210.248.

198 (3) The division shall provide the list to each dealer,
199 agent, or distributing agent authorized to affix stamps under
200 this chapter, to each distributor, and to any other person upon
201 request.

202 (4) Cigarettes of a brand family that is not on the
203 directory list shall be presumptively considered nonsettling

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204 manufacturer cigarettes to which the fee imposed by ss. 210.23-
205 210.248 applies.

206 Section 6. Section 210.240, Florida Statutes, is created to
207 read:

208 210.240 Reports.-

209 (1) Each dealer, agent, and distributing agent required to
210 file a report under s. 210.05 or s. 210.09, and each distributor
211 required to file a return or return under s. 210.55 or s.
212 210.60, shall, in addition to the information required by those
213 sections, include in that required report or return each month,
214 as appropriate:

215 (a) The number of individual nonsettling manufacturer
216 cigarettes in packages on which the dealer, agent, distributing
217 agent, or distributor affixed or was required to affix a stamp
218 or stamp insignia by the use of a metering machine during the
219 preceding month;

220 (b) The amount of the fee imposed by ss. 210.23-210.248
221 paid on cigarettes described in paragraphs (a); and

222 (c) Any other information that the division considers
223 necessary or appropriate to determine the amount of the fee
224 imposed by ss. 210.23-210.248, to enforce ss. 210.23-210.248, or
225 to provide the reports showing fees paid for nonsettling
226 manufacturer cigarette as required by s. 210.242.

227 (2) The information required under subsection (1) must be
228 itemized for each place of business and by manufacturer and
229 brand family.

230 (3) The requirement to report information under this
231 section shall be enforced in the same manner as the requirement
232 to deliver to or file with the division a report or return

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233 required under this chapter.

234 Section 7. Section 210.245, Florida Statutes, is created to
235 read:

236 210.245 Penalties for noncompliance.—Nonsettling
237 manufacturer cigarettes subject to any fee imposed by ss.
238 210.23-210.248, but upon which the fee has not been paid, shall
239 be treated as cigarettes for which the tax assessed by this
240 chapter has not been paid, and all persons selling, receiving,
241 purchasing, possessing, consuming, handling, distributing, or
242 using such cigarettes are subject to all penalties imposed by
243 this chapter for violations of this chapter.

244 Section 8. Section 210.246, Florida Statutes, is created to
245 read:

246 210.246 Application.—Sections 210.23-210.248 apply without
247 regard to s. 210.06(5), or any other law that might be read to
248 create an exemption for interstate sales.

249 Section 9. Section 210.248, Florida Statutes, is created to
250 read:

251 210.248 General powers of the Division of Alcoholic
252 Beverages and Tobacco.—The Division of Alcoholic Beverages and
253 Tobacco may adopt rules to administer ss. 210.23-210.248,
254 including rules that address the imposition, collection, and
255 enforcement of the fees and required reporting.

256 Section 10. This act shall take effect July 1, 2010.