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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.; defining  
5           terms; creating s. 210.234, F.S.; imposing a fee on the  
6           sale, receipt, purchase, possession, consumption,  
7           handling, distribution, and use of nonsettling  
8           manufacturer cigarettes that are required to have a stamp  
9           affixed or stamp insignia applied to the package of  
10          cigarettes on which tax is otherwise required to be paid;  
11          providing that the fee imposed is in addition to any other  
12          privilege, license, fee, or tax required or imposed by  
13          state law; prescribing methods to affix a stamp or  
14          insignia to the tobacco products; creating s. 210.236,  
15          F.S.; providing the fee rate for nonsettling  
16          manufacturers; creating s. 210.238, F.S.; requiring  
17          settling manufacturers to certify specified information to  
18          the Attorney General relating to the brand families of  
19          their cigarettes; requiring the Division of Alcoholic  
20          Beverages and Tobacco of the Department of Business and  
21          Professional Regulation to post a directory listing all  
22          settling manufacturers that have provided accurate  
23          certifications of their products to calculate payments  
24          under the tobacco settlement agreement for the relevant  
25          year on the Internet website of the division; providing  
26          that any cigarette of a brand family not on the directory  
27          list be presumptively considered a nonsettling  
28          manufacturer product; creating s. 210.240, F.S.; requiring

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29 each dealer, agent, and distributing agent to file a  
 30 report; requiring the report to include certain specified  
 31 information; creating s. 210.245, F.S.; providing  
 32 penalties for a nonsettling manufacturer that fails to pay  
 33 the mandated fees; creating s. 210.246, F.S.; providing  
 34 for application of the act; creating s. 210.248, F.S.;  
 35 authorizing the division to adopt rules; creating s.  
 36 210.249, F.S.; providing conditions for imposing the fee  
 37 on subsequent participating manufacturers who already make  
 38 payments on Florida sales of cigarettes pursuant to the  
 39 master settlement agreement; providing an effective date.  
 40

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

42  
 43 Section 1. Section 210.23, Florida Statutes, is created to  
 44 read:

45 210.23 Purpose.—The purpose of ss. 210.23-210.248 is to:

46 (1) Prevent nonsettling manufacturers from undermining  
 47 this state's policy of discouraging underage smoking by offering  
 48 cigarettes and cigarette tobacco products at prices that are  
 49 substantially below the prices of cigarettes of other  
 50 manufacturers.

51 (2) Protect the tobacco settlement agreement and its  
 52 funding, which has been reduced because of the growth of sales  
 53 of nonsettling manufacturer cigarettes, by recouping for this  
 54 state revenue that is lost because of sales of cigarettes by  
 55 nonsettling manufacturers of cigarettes.

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56       (3) Provide funding to enforce and administer any  
57 legislation relating to nonsettling manufacturers.

58       (4) Provide funding for any other purpose the Legislature  
59 determines.

60       Section 2. Section 210.232, Florida Statutes, is created  
61 to read:

62       210.232 Definitions.—As used in ss. 210.23-210.248, the  
63 term:

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

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

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

70       (4) "Dealer" has the same meaning as in s. 210.01(5) and  
71 (6).

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

73       (6) "Distributing agent" has the same meaning as in s.  
74 210.01.

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

76       (8) "Manufacturer" means a person who manufactures,  
77 fabricates, or assembles cigarettes or cigarette tobacco  
78 products for sale or distribution. For purposes of ss. 210.23-  
79 210.248, the term includes a person who is the first importer  
80 into the United States of cigarettes manufactured outside the  
81 United States.

82       (9) "Nonsettling manufacturer" means a manufacturer of  
83 cigarettes which is not a settling manufacturer.

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

86 (11) "Settling manufacturer" means a manufacturer of  
87 cigarettes that:

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

90 (b) Has voluntarily entered into an agreement with this  
91 state, approved by the division, agreeing to terms similar to  
92 those contained in the tobacco settlement agreement described in  
93 paragraph (13) (a), including making annual payments to the state  
94 with respect to the sale, receipt, purchase, possession,  
95 consumption, handling, distribution, and use of its cigarettes  
96 in this state equal to at least the amount of the fee that would  
97 have been due on such cigarettes under ss. 210.23-210.248 for  
98 the relevant year if the manufacturer were a nonsettling  
99 manufacturer.

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

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112 (13) "Tobacco settlement agreement" means:

113 (a) The settlement agreement entered into on August 25,  
114 1997, in settlement of *State of Florida v. American Tobacco Co.*,  
115 No. 95-1466AH (Fla. 15th Cir. Ct. 1996), and under which the  
116 settling manufacturer undertook payment obligations to the  
117 state; or

118 (b) The settlement agreement entered into on March 15,  
119 1996, in settlement of *State of Florida v. American Tobacco Co.*,  
120 No. 95-1466AH (Fla. 15th Cir. Ct. 1996).

121 Section 3. Section 210.234, Florida Statutes, is created  
122 to read:

123 210.234 Fee imposed.—

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

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

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

135 (4) The fee imposed by this section shall be collected  
136 from distributors, dealers, agents, and distributing agents of  
137 nonsettling manufacturer cigarettes or from other persons or  
138 entities from whom the tax imposed by this chapter on such  
139 nonsettling manufacturer cigarettes may be collected under this

140 chapter and in the manner provided by this chapter. The  
141 provisions of ss. 210.01, 210.02, 210.021, 210.03, 210.04,  
142 210.05, 210.06, 210.07, 210.08, 210.09, 210.10, 210.11, 210.12,  
143 210.13, 210.14, 210.15, 210.16, 210.161, 210.18, 210.181,  
144 210.19, 210.20, 210.22, 210.25, 210.30, 210.31, 210.35, 210.40,  
145 210.50, 210.55, 210.60, 210.65, 210.67, 210.70, and 210.75, so  
146 far as lawful or practicable, apply to the fee imposed by this  
147 section and to the collection thereof as if fully set out in ss.  
148 210.23-210.248. However, any one or more sections may not apply  
149 to the extent that the section conflicts with ss. 210.23-  
150 210.248.

151 (5) With respect to nonsettling manufacturer cigarettes,  
152 the division shall prescribe, prepare, and furnish stamps of  
153 such denominations and quantities as may be necessary for the  
154 payment of the fee imposed by this section, and may also permit  
155 the fee to be paid through the use of a stamp insignia to be  
156 applied by metering machines. Such stamps or stamp insignia are  
157 required and shall be sold, affixed, and administered in the  
158 same manner as the stamps and stamp insignia that are  
159 prescribed, prepared, and furnished for the taxes imposed  
160 pursuant to other provisions of this chapter. The division may  
161 prescribe that payment of the fee imposed by this section and  
162 the tax imposed by s. 210.30 shall be by way of a single stamp  
163 or stamp insignia whose value shall be the combined value of  
164 such fee and tax, and which shall be identifiable with such  
165 markings or colorings as may be necessary to distinguish the  
166 stamp or stamp insignia from the stamp or stamp insignia used on

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167 cigarette packages not subject to the fee imposed by this  
168 section.

169 Section 4. Section 210.236, Florida Statutes, is created  
170 to read:

171 210.236 Rate of fee.—The fee imposed pursuant to s.  
172 210.234 shall be at the rate of 2.6 cents for each nonsettling  
173 manufacturer cigarette.

174 Section 5. Section 210.238, Florida Statutes, is created  
175 to read:

176 210.238 Settling manufacturer certification and list.—

177 (1) By July 1, 2011, and annually thereafter, not later  
178 than the 30th day of April in each year, each settling  
179 manufacturer shall certify to the Attorney General, on a form  
180 prescribed by the Attorney General, the names of the brand  
181 families that are to be deemed its cigarettes for purposes of  
182 its tobacco settlement agreement or other agreement described in  
183 s. 210.232(11)(b) for the relevant year, including for purposes  
184 of calculating any payment obligations of that settling  
185 manufacturer under that agreement in the volume and shares  
186 determined under the agreement. A settling manufacturer may not  
187 include a brand family in such certification if it does not deem  
188 sales of cigarettes of that brand family in this state to be its  
189 cigarettes for purposes of the master settlement agreement as  
190 defined in s. 210.249. Each settling manufacturer shall update  
191 such information in the event of any change within 30 calendar  
192 days after the date of the change.

193 (2) By July 15, 2011, the division shall develop,  
194 maintain, and publish on its Internet website a directory

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195 listing of all settling manufacturers that have provided  
196 accurate certifications under subsection (1). The directory  
197 shall list the brand families of such settling manufacturers  
198 included in such certifications. The division shall update the  
199 directory as necessary in order to add or remove a manufacturer  
200 or brand family and keep the directory in conformity with the  
201 requirements of ss. 210.23-210.248.

202 (3) The division shall provide the list to each dealer,  
203 agent, or distributing agent authorized to affix stamps under  
204 this chapter, to each distributor, and to any other person upon  
205 request.

206 (4) Cigarettes of a brand family that is not on the  
207 directory list shall be presumptively considered nonsettling  
208 manufacturer cigarettes to which the fee imposed by s. 210.234  
209 applies.

210 Section 6. Section 210.240, Florida Statutes, is created  
211 to read:

212 210.240 Reports.—

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

219 (a) The number of individual nonsettling manufacturer  
220 cigarettes in packages on which the dealer, agent, distributing  
221 agent, or distributor affixed or was required to affix a stamp  
222 or stamp insignia by the use of a metering machine during the



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223 preceding month;

224 (b) The amount of the fee imposed by s. 210.234 paid on  
225 cigarettes described in paragraph (a); and

226 (c) Any other information that the division considers  
227 necessary or appropriate to determine the amount of the fee  
228 imposed by s. 210.234, to enforce ss. 210.23-210.248, or to  
229 provide the reports showing fees paid for nonsettling  
230 manufacturer cigarettes.

231 (2) The information required under subsection (1) must be  
232 itemized for each place of business and by manufacturer and  
233 brand family.

234 (3) The requirement to report information under this  
235 section shall be enforced in the same manner as the requirement  
236 to deliver to or file with the division a report or return  
237 required under this chapter.

238 Section 7. Section 210.245, Florida Statutes, is created  
239 to read:

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

248 Section 8. Section 210.246, Florida Statutes, is created  
249 to read:

250        210.246 Application.—Sections 210.23-210.248 apply without  
 251 regard to s. 210.06(5), or any other law that might be read to  
 252 create an exemption for interstate sales.

253        Section 9. Section 210.248, Florida Statutes, is created  
 254 to read:

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

260        Section 10. Section 210.249, Florida Statutes, is created  
 261 to read:

262        210.249 Exemption for subsequent participating  
 263 manufacturers.—

264        (1) The fee imposed under s. 210.234 does not apply to  
 265 cigarettes of any subsequent participating manufacturer, as  
 266 defined in the master settlement agreement, that would otherwise  
 267 be required to pay the fee under s. 210.234 until the effective  
 268 date of a credit amendment to the master settlement agreement,  
 269 and such cigarettes shall be treated as settling manufacturer  
 270 cigarettes until such time.

271        (2) For purposes of this section, the term:

272        (a) "Credit amendment" means an amendment to the master  
 273 settlement agreement that offers a credit to subsequent  
 274 participating manufacturers for amounts paid under that  
 275 agreement with respect to their products in a form agreed upon  
 276 by:

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277       1. The settling states, as defined in the master  
278 settlement agreement, with aggregate allocable shares, as  
279 defined in the master settlement agreement, equal to at least  
280 99.937049 percent;

281       2. The original participating manufacturers, as defined in  
282 the master settlement agreement; and

283       3. The subsequent participating manufacturers that would  
284 otherwise be required to pay the fee under s. 210.234 whose  
285 aggregate market share, expressed as a percentage of the total  
286 number of individual cigarettes sold in the 50 United States,  
287 the District of Columbia, and Puerto Rico during the calendar  
288 year at issue, as measured by excise taxes collected by the  
289 Federal Government, and in the case of cigarettes sold in Puerto  
290 Rico, by arbitrios de cigarillos collected by the Puerto Rico  
291 taxing authority, is greater than 3.75 percent. For purposes of  
292 calculation of subsequent participating manufacturer share under  
293 s. 210.234, 0.09 ounces of "roll your own" tobacco shall  
294 constitute one individual cigarette.

295       (b) "Master settlement agreement" means the settlement  
296 agreement entered into on November 23, 1998, by the settling  
297 states and the participating manufacturers, as defined in that  
298 agreement, as amended to date.

299       Section 11. This act shall take effect July 1, 2011.