

By Senator Altman

24-01397A-12

20121414

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 in
22 order to calculate their payments under the tobacco
23 settlement agreement for the relevant year on the
24 Internet website of the division; providing that any
25 cigarette of a brand family not on the directory list
26 be 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

24-01397A-12

20121414

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; creating s. 210.249, F.S.; providing

36 conditions for imposing the fee on subsequent

37 participating manufacturers who already make payments

38 on Florida sales of cigarettes pursuant to the master

39 settlement agreement; defining terms; providing an

40 effective date.

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

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

45 read:

46 210.23 Purpose.—The purpose of ss. 210.23-210.249 is to:

47 (1) Prevent nonsettling manufacturers from undermining this

48 state's policy of discouraging underage smoking by offering

49 cigarettes and cigarette tobacco products at prices that are

50 substantially below the prices of cigarettes of other

51 manufacturers.

52 (2) Protect the tobacco settlement agreement and its

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

54 of nonsettling manufacturer cigarettes, by recouping for this

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

56 nonsettling manufacturers of cigarettes.

57 (3) Provide funding to enforce and administer any

58 legislation relating to nonsettling manufacturers.

24-01397A-12

20121414

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

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

63 210.232 Definitions.—As used in ss. 210.23-210.249, the
64 term:

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

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

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

71 (4) "Dealer" has the same meaning as in s. 210.01(5) and
72 (6).

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

74 (6) "Distributing agent" has the same meaning as in s.
75 210.01.

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

77 (8) "Manufacturer" means a person who manufactures,
78 fabricates, or assembles cigarettes or cigarette tobacco
79 products for sale or distribution. For purposes of ss. 210.23-
80 210.249, the term includes a person who is the first importer
81 into the United States of cigarettes manufactured outside the
82 United States.

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

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

87 (11) "Settling manufacturer" means a manufacturer of

24-01397A-12

20121414

88 cigarettes that:

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

91 (b) Has voluntarily entered into an agreement with this
92 state, approved by the division, agreeing to terms similar to
93 those contained in the tobacco settlement agreement described in
94 paragraph (13) (a), including making annual payments to the state
95 with respect to the sale, receipt, purchase, possession,
96 consumption, handling, distribution, and use in this state of
97 its cigarettes equal to at least the amount of the fee that
98 would have been due on such cigarettes under ss. 210.23-210.249
99 for the relevant year if the manufacturer were a nonsettling
100 manufacturer.

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

113 (13) "Tobacco settlement agreement" means:

114 (a) The settlement agreement entered into on August 25,
115 1997, in settlement of *State of Florida v. American Tobacco Co.*,
116 No. 95-1466AH (Fla. 15th Cir. Ct. 1996), and under which the

24-01397A-12

20121414

117 settling manufacturer undertook payment obligations to the
118 state; or

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

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

124 210.234 Fee imposed.—

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

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

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

136 (4) The fee imposed by ss. 210.23-210.249 shall be
137 collected from distributors, dealers, agents, and distributing
138 agents of nonsettling manufacturer cigarettes or from other
139 persons or entities from whom the tax imposed by this chapter on
140 such nonsettling manufacturer cigarettes may be collected under
141 this chapter and in the manner provided by this chapter. The
142 provisions of ss. 210.01, 210.02, 210.021, 210.03, 210.04,
143 210.05, 210.06, 210.07, 210.08, 210.09, 210.10, 210.11, 210.12,
144 210.13, 210.14, 210.15, 210.16, 210.161, 210.18, 210.181,
145 210.19, 210.20, 210.22, 210.25, 210.30, 210.31, 210.35, 210.40,

24-01397A-12

20121414

146 210.50, 210.55, 210.60, 210.65, 210.67, 210.70, and 210.75, so
147 far as lawful or practicable, apply to the fee imposed by ss.
148 210.23-210.249 and to the collection thereof as if fully set out
149 in ss. 210.23-210.249. However, any one or more sections may not
150 apply to the extent the section conflicts with ss. 210.23-
151 210.249.

152 (5) With respect to nonsettling manufacturer cigarettes,
153 the division shall prescribe, prepare, and furnish stamps of
154 such denominations and quantities as may be necessary for the
155 payment of the fee imposed by ss. 210.23-210.249, and may also
156 permit the fee to be paid through the use of a stamp insignia to
157 be applied by metering machines. Such stamps or stamp insignia
158 are required and shall be sold, affixed, and administered in the
159 same manner as the stamps and stamp insignia that are
160 prescribed, prepared, and furnished for the taxes imposed
161 pursuant to other provisions of this chapter. The division may
162 prescribe that payment of the fee imposed by ss. 210.23-210.249
163 and the tax imposed by s. 210.30 shall be by way of a single
164 stamp or stamp insignia whose value shall be the combined value
165 of such fee and tax, and which shall be identifiable with such
166 markings or colorings as may be necessary to distinguish the
167 stamp or stamp insignia from the stamp or insignia used on
168 cigarette packages not subject to the fee imposed by ss. 210.23-
169 210.249.

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

172 210.236 Rate of fee.—A fee is imposed at the rate of 2.6
173 cents for each nonsettling manufacturer cigarette.

174 Section 5. Section 210.238, Florida Statutes, is created to

24-01397A-12

20121414

read:

210.238 Settling manufacturer certification and list.-

(1) By July 1, 2012, and annually thereafter not later than the 30th day of April in each year, each settling manufacturer shall certify to the Attorney General, on a form prescribed by the Attorney General, the names of the brand families that are to be deemed its cigarettes for purposes of its tobacco settlement agreement or other agreement described in s. 210.232(11)(b) for the relevant year, including for purposes of calculating any payment obligations of that settling manufacturer under that agreement in the volume and shares determined under agreement. A settling manufacturer may not include a brand family in such certification if it does not deem sales of cigarettes of that brand family in this state to be its cigarettes for purposes of the master settlement agreement between 52 states and territories and participating cigarette manufacturers. Each settling manufacturer shall update such information in the event of any change within 30 calendar days after the date of the change.

(2) By July 15, 2012, the division shall develop, maintain, and publish on its Internet website a directory listing of all settling manufacturers that have provided accurate certifications under subsection (1). The directory shall list the brand families of such settling manufacturers included in such certifications. The division shall update the directory as necessary in order to add or remove a manufacturer or brand family and keep the directory in conformity with the requirements of ss. 210.23-210.249.

(3) The division shall provide the list to each dealer,

24-01397A-12

20121414

204 agent, or distributing agent authorized to affix stamps under
205 this chapter, to each distributor, and to any other person upon
206 request.

207 (4) Cigarettes of a brand family that is not on the
208 directory list shall be presumptively considered nonsettling
209 manufacturer cigarettes to which the fee imposed by ss. 210.23-
210 210.249 applies.

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

213 210.240 Reports.-

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

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

225 (b) The amount of the fee imposed by ss. 210.23-210.249
226 paid on cigarettes described in paragraph (a); and

227 (c) Any other information that the division considers
228 necessary or appropriate to determine the amount of the fee
229 imposed by ss. 210.23-210.249, to enforce ss. 210.23-210.249, or
230 to provide the reports showing fees paid for nonsettling
231 manufacturer cigarettes as required by s. 210.234.

232 (2) The information required under subsection (1) must be

24-01397A-12

20121414

233 itemized for each place of business and by manufacturer and
234 brand family.

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

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

241 210.245 Penalties for noncompliance.—Nonsettling
242 manufacturer cigarettes subject to any fee imposed by ss.
243 210.23-210.249, but upon which the fee has not been paid, shall
244 be treated as cigarettes for which the tax assessed by this
245 chapter has not been paid, and all persons selling, receiving,
246 purchasing, possessing, consuming, handling, distributing, or
247 using such cigarettes are subject to all penalties imposed by
248 this chapter for violations of this chapter.

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

251 210.246 Application.—Sections 210.23-210.249 apply without
252 regard to s. 210.06(5), or any other law that might be read to
253 create an exemption for interstate sales.

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

256 210.248 General powers of the Division of Alcoholic
257 Beverages and Tobacco.—The Division of Alcoholic Beverages and
258 Tobacco may adopt rules to administer ss. 210.23-210.249,
259 including rules that address the imposition, collection, and
260 enforcement of the fees and required reporting.

261 Section 10. Section 210.249, Florida Statutes, is created

24-01397A-12

20121414

262 to read:

263 210.249 Exemption for subsequent participating
264 manufacturers.—The fee imposed by ss. 210.23-210.249 does not
265 apply to cigarettes of any subsequent participating
266 manufacturer, as defined in the Master Settlement Agreement,
267 which would otherwise be required to pay the fee under ss.
268 210.23-210.249 until the effective date of a credit amendment to
269 the Master Settlement Agreement, and such cigarettes shall be
270 treated as settling manufacturer cigarettes until such time. For
271 purposes of ss. 210.23-210.249, the term “Master Settlement
272 Agreement” means the settlement agreement entered into on
273 November 23, 1998, by the settling states and the participating
274 manufacturers, as defined in that agreement, as amended to date.
275 For purposes of ss. 210.23-210.249, the term “credit amendment”
276 means an amendment to the Master Settlement Agreement which
277 offers a credit to subsequent participating manufacturers for
278 amounts paid under that agreement with respect to their products
279 in a form agreed upon by:

280 (1) The settling states, as defined in the Master
281 Settlement Agreement, with aggregate allocable shares, as
282 defined in the Master Settlement Agreement, equal to at least
283 99.937049 percent;

284 (2) The original participating manufacturers, as defined in
285 the Master Settlement Agreement; and

286 (3) The subsequent participating manufacturers who would
287 otherwise be required to pay the fee under ss. 210.23-210.249
288 whose aggregate market share, expressed as a percentage of the
289 total number of individual cigarettes sold in the 50 states, the
290 District of Columbia, and Puerto Rico, during the calendar year

24-01397A-12

20121414

291 at issue, as measured by excise taxes collected by the Federal
292 Government and, in the case of cigarettes sold in Puerto Rico,
293 by arbitrios de cigarillos collected by the Puerto Rico taxing
294 authority, is greater than 3.75 percent. For purposes of
295 calculating subsequent participating manufacturer share under
296 ss. 210.23-210.249, 0.09 ounces of "roll your own" tobacco
297 constitutes one individual cigarette.

298 Section 11. This act shall take effect July 1, 2012.