

By Senator Altman

16-00220-14

2014614\_\_

1                   A bill to be entitled  
2           An act relating to cigarette products of nonsettling  
3           manufacturers; creating s. 210.23, F.S.; providing a  
4           purpose; providing definitions; imposing a fee on the  
5           sale, receipt, purchase, possession, consumption,  
6           handling, distribution, and use of nonsettling  
7           manufacturer cigarettes that are required to have a  
8           stamp affixed or stamp insignia applied to the package  
9           of cigarettes on which tax is otherwise required to be  
10          paid; providing that the fee imposed is in addition to  
11          any other privilege, license, fee, or tax required or  
12          imposed by state law; prescribing methods to affix a  
13          stamp or stamp insignia to the tobacco products;  
14          requiring a settling manufacturer to certify the names  
15          of certain brand families to the Attorney General;  
16          requiring the Division of Alcoholic Beverages and  
17          Tobacco of the Department of Business and Professional  
18          Regulation to post a directory listing of certain  
19          settling manufacturers on its website; requiring that  
20          cigarettes of a brand family that are not on the  
21          directory list be presumed to be nonsettling  
22          manufacturer cigarettes; requiring each dealer, agent,  
23          and distributing agent, and distributor to report  
24          additional information; requiring the report to  
25          include certain information; providing penalties for a  
26          nonsettling manufacturer that fails to pay the  
27          mandated fee; providing for application; providing  
28          conditions for imposing the fee on certain subsequent  
29          participating manufacturers; authorizing the division

16-00220-14

2014614\_\_

30 to adopt rules; providing an effective date.

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

33  
34 Section 1. Section 210.23, Florida Statutes, is created to  
35 read:

36 210.23 Nonsettling manufacturer cigarettes.-

37 (1) PURPOSE.-The purpose of this section is to:

38 (a) Prevent nonsettling manufacturers from undermining the  
39 state policy of discouraging underage smoking by offering  
40 cigarettes and cigarette tobacco products at prices that are  
41 substantially lower than the prices of cigarettes of other  
42 manufacturers.

43 (b) Protect the tobacco settlement agreement and its  
44 funding, which has been reduced because of the growth in sales  
45 of nonsettling manufacturer cigarettes, by recouping state  
46 revenue that is lost because of sales of nonsettling  
47 manufacturers cigarettes.

48 (c) Provide funding to enforce and administer legislation  
49 relating to nonsettling manufacturers.

50 (2) DEFINITIONS.-As used in this section, the term:

51 (a) "Brand family" means each style of cigarettes sold  
52 under a common brand name, trademark, logo, symbol, motto,  
53 selling message, recognizable pattern of colors, or other  
54 indication of product identification.

55 (b) "Credit amendment" means an amendment to the Master  
56 Settlement Agreement which offers a credit to subsequent  
57 participating manufacturers for amounts paid under that  
58 agreement with respect to their products in a form agreed upon

16-00220-14

2014614\_\_

59 by:

60 1. The settling states, as defined in the Master Settlement  
61 Agreement, having aggregate allocable shares, as defined in the  
62 Master Settlement Agreement, equal to at least 99.937049  
63 percent;

64 2. The original participating manufacturers, as defined in  
65 the Master Settlement Agreement; and

66 3. The subsequent participating manufacturers that would  
67 otherwise be required to pay the fee under subsection (3) whose  
68 aggregate market share, expressed as a percentage of the total  
69 number of individual cigarettes sold in the 50 states, the  
70 District of Columbia, and Puerto Rico, during the calendar year  
71 at issue, as measured by excise taxes collected by the Federal  
72 Government and, in the case of cigarettes sold in Puerto Rico,  
73 by "arbitrios de cigarillos" collected by the Puerto Rico taxing  
74 authority, is greater than 3.75 percent. For purposes of  
75 calculating subsequent participating manufacturer share under  
76 this section, 0.09 ounces of roll-your-own tobacco constitutes  
77 one individual cigarette.

78 (c) "Manufacturer" means a person that manufactures,  
79 fabricates, or assembles cigarettes or cigarette tobacco  
80 products for sale or distribution, including a person that is  
81 the first importer into the United States of cigarettes  
82 manufactured outside the United States.

83 (d) "Master Settlement Agreement" means the settlement  
84 agreement entered into on November 23, 1998, by the settling  
85 states and the participating manufacturers, as defined in that  
86 agreement, as amended to date.

87 (e) "Nonsettling manufacturer" means a manufacturer of

16-00220-14

2014614\_\_

88 cigarettes which is not a settling manufacturer.

89 (f) "Nonsettling manufacturer cigarettes" means cigarettes  
90 that are not manufactured by a settling manufacturer.

91 (g) "Settling manufacturer" means a manufacturer of  
92 cigarettes which:

93 1. Signed one of the tobacco settlement agreements before  
94 July 1, 2008; or

95 2. Has voluntarily entered into an agreement with this  
96 state, approved by the division, agreeing to terms similar to  
97 those contained in the tobacco settlement agreement described in  
98 subparagraph (i)1., including making annual payments to the  
99 state with respect to the sale, receipt, purchase, possession,  
100 consumption, handling, distribution, and use in this state of  
101 its cigarettes which equal at least the amount of the fee that  
102 would have been due on such cigarettes under subsection (3) for  
103 the relevant year if the manufacturer were a nonsettling  
104 manufacturer.

105 (h) "Settling manufacturer cigarettes" means:

106 1. Cigarettes of a brand family that a settling  
107 manufacturer certifies under subsection (4) is to be deemed its  
108 brand family for purposes of calculating such settling  
109 manufacturer's payments under the tobacco settlement agreement  
110 described in subparagraph (i)1. or other agreement described in  
111 subparagraph (g)2. for the relevant year; or

112 2. Any other cigarettes that are included in calculating  
113 payments due by a settling manufacturer under the tobacco  
114 settlement agreement described in subparagraph (i)1. or other  
115 agreement described in subparagraph (g)2.

116 (i) "Tobacco settlement agreement" means:

16-00220-14

2014614\_\_

117 1. The settlement agreement entered into on August 25,  
118 1997, in settlement of *State of Florida v. American Tobacco Co.*,  
119 No. 95-1466AH (Fla. 15th Cir. Ct. 1996), and under which the  
120 settling manufacturer undertook payment obligations to the  
121 state; or

122 2. The settlement agreement entered into on March 15, 1996,  
123 in settlement of *State of Florida v. American Tobacco Co.*, No.  
124 95-1466AH (Fla. 15th Cir. Ct. 1996).

125 (3) FEE IMPOSED.—

126 (a) A fee of 2.6 cents is imposed on the sale, receipt,  
127 purchase, possession, consumption, handling, distribution, and  
128 use in this state of each nonsettling manufacturer cigarette  
129 that is required to have a stamp affixed or stamp insignia  
130 applied to a package of such cigarettes under this chapter or on  
131 which tax is otherwise required to be paid under this chapter.  
132 Such fee is in addition to any other privilege, license, fee, or  
133 tax required or imposed by state law.

134 (b) The fee imposed by this section shall be collected from  
135 distributors, dealers, agents, and distributing agents of  
136 nonsettling manufacturer cigarettes or from other persons from  
137 which the tax imposed by this chapter on such nonsettling  
138 manufacturer cigarettes may be collected under this chapter and  
139 in the manner provided in this chapter.

140 (c) With respect to nonsettling manufacturer cigarettes,  
141 the division shall prescribe, prepare, and furnish stamps of  
142 such denominations and quantities as are necessary for the  
143 payment of the fee imposed by this subsection, and the division  
144 may also authorize the fee to be paid through the use of a stamp  
145 insignia to be applied by metering machines. Such stamps or

16-00220-14

2014614\_\_

146 stamp insignia are required and shall be sold, affixed, and  
147 administered in the same manner as the stamps and stamp insignia  
148 that are prescribed, prepared, and furnished for the taxes  
149 imposed by other provisions of this chapter. The division may  
150 prescribe that payment of the fee imposed by this subsection and  
151 the tax imposed by s. 210.30 be by way of a single stamp or  
152 stamp insignia the value of which must be the combined value of  
153 such fee and tax and that the stamp or stamp insignia be  
154 identifiable with such markings or colorings as are necessary to  
155 distinguish the stamp or stamp insignia from the stamp or stamp  
156 insignia used on cigarette packages not subject to the fee  
157 imposed by this subsection.

158 (d) The fee imposed by this subsection does not apply to a  
159 cigarette made by a settling manufacturer.

160 (4) SETTLING MANUFACTURER CERTIFICATION AND LIST.—

161 (a) By July 1, 2014, and by April 30 of each year  
162 thereafter, each settling manufacturer shall certify to the  
163 Attorney General, on a form prescribed by the Attorney General,  
164 the names of the brand families which are to be deemed its  
165 cigarettes for purposes of its tobacco settlement agreement or  
166 other agreement described in subparagraph (g)1. for the relevant  
167 year, including for purposes of calculating any payment  
168 obligation of that settling manufacturer under that agreement in  
169 the volume and shares determined under the agreement. A settling  
170 manufacturer may not include a brand family in such  
171 certification if it does not deem sales of cigarettes of that  
172 brand family in this state to be its cigarettes for purposes of  
173 the Master Settlement Agreement between 52 states and  
174 territories and participating cigarette manufacturers. Each

16-00220-14

2014614\_\_

175 settling manufacturer shall update such certification in the  
176 event of any change within 30 calendar days after the date of  
177 the change.

178 (b) By July 15, 2014, the division shall develop, maintain,  
179 and publish on its website a directory listing of all settling  
180 manufacturers that have provided certifications under paragraph  
181 (a). The directory must also list the brand families provided in  
182 the certifications of such settling manufacturers. The division  
183 shall update the directory as necessary to add or remove a  
184 manufacturer or brand family and to keep the directory in  
185 conformity with the requirements of this section.

186 (c) The division shall provide the list to each dealer,  
187 agent, and distributing agent authorized to affix stamps under  
188 this chapter and to each distributor, as defined in s. 210.25.  
189 The division shall provide the list to any other person upon  
190 request.

191 (d) Cigarettes of a brand family that is not on the  
192 directory list are presumed to be nonsettling manufacturer  
193 cigarettes, which are subject to the fee imposed by subsection  
194 (3).

195 (5) REPORTS.—

196 (a) Each dealer, agent, and distributing agent required to  
197 file a report under s. 210.09 and each distributor required to  
198 file a return under s. 210.55 shall, in addition to the  
199 information required by those sections, include each month in  
200 that required report or return, as appropriate:

201 1. The number of individual nonsettling manufacturer  
202 cigarettes in packages on which the dealer, agent, distributing  
203 agent, or distributor affixed or was required to affix a stamp

16-00220-14

2014614\_\_

204 or stamp insignia by the use of a metering machine during the  
205 preceding month;

206 2. The amount of the fee imposed by subsection (3) paid on  
207 cigarettes described in subparagraph 1.; and

208 3. Other information that the division considers necessary  
209 or appropriate to determine the amount of the fee imposed by  
210 subsection (3), to enforce this section, or to provide the  
211 reports showing fees paid for nonsettling manufacturer  
212 cigarettes as required under subsection (3).

213 (b) The information required under paragraph (a) must be  
214 itemized for each place of business and by manufacturer and  
215 brand family.

216 (c) The division shall enforce the requirement to report  
217 information under this section in the same manner as the  
218 requirement to deliver to or file with the division a report or  
219 return under this chapter.

220 (6) PENALTIES FOR NONCOMPLIANCE.—Nonsettling manufacturer  
221 cigarettes subject to the fee imposed by subsection (3) but upon  
222 which the fee has not been paid shall be treated as cigarettes  
223 for which the tax assessed by this chapter has not been paid,  
224 and all persons selling, receiving, purchasing, possessing,  
225 consuming, handling, distributing, or using such cigarettes are  
226 subject to the penalties imposed for violating this chapter.

227 (7) APPLICATION.—

228 (a) This section applies without regard to s. 210.06(5) or  
229 any other law that might be read to create an exemption for  
230 interstate sales.

231 (b) Except for ss. 210.011, 210.085, 210.095, 210.151,  
232 210.1605, 210.1801, 210.185, 210.201, 210.276, 210.405, 210.45,



16-00220-14

2014614\_\_

233 and 210.51, the remaining provisions of this chapter apply to  
234 this section to the extent they do not conflict.

235 (c) The fee imposed by subsection (3) does not apply to  
236 cigarettes of any subsequent participating manufacturer, as  
237 defined in the Master Settlement Agreement, which would  
238 otherwise be required to pay such fee until the effective date  
239 of a credit amendment to the Master Settlement Agreement, and  
240 such cigarettes shall be treated as settling manufacturer  
241 cigarettes until such time.

242 (8) RULE AUTHORITY.—The Division of Alcoholic Beverages and  
243 Tobacco may adopt rules to administer this section, including  
244 rules that address reporting requirements and imposition,  
245 collection, and enforcement of fees.

246 Section 2. This act shall take effect July 1, 2014.