

By Senator Altman

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

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30 authorizing the division to adopt rules; providing an
31 effective date.

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

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

37 210.23 Nonsettling manufacturer cigarettes.-

38 (1) PURPOSE.-The purposes of this section are to:

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

43 (b) Protect the tobacco settlement agreement and the
44 resultant funding, which has been reduced because of the growth
45 in sales of nonsettling manufacturer cigarettes, by recouping
46 state revenue that is lost because of sales of nonsettling
47 manufacturer 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, mascot, or
54 other indication of product identification.

55 (b) "Cigarette" has the same meaning as in s. 210.185(7).

56 (c) "Credit amendment" means an amendment to the Master
57 Settlement Agreement which offers a credit to subsequent
58 participating manufacturers for amounts paid under that

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59 agreement with respect to their products in a form agreed upon
60 by:

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

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

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

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

83 (e) "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.

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

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88 cigarettes which is not a settling manufacturer.

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

91 (h) "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, as defined
98 in subparagraph (j)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 was a nonsettling
104 manufacturer.

105 (i) "Settling manufacturer cigarettes" means:

106 1. Cigarettes that a settling manufacturer certifies under
107 subsection (4) as being in its brand family for purposes of
108 calculating its payments under the tobacco settlement agreement
109 described in subparagraph (j)1. or other agreement as described
110 in subparagraph (h)2. for the relevant year; or

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

115 (j) "Tobacco settlement agreement" means:

116 1. The settlement agreement entered into on August 25,

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

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

124 (3) FEE IMPOSED.—

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

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

137 (c) With respect to nonsettling manufacturer cigarettes,
138 the division shall prescribe, prepare, and furnish stamps of
139 such denominations and quantities as are necessary for the
140 payment of the fee imposed by this subsection, and the division
141 may also authorize the fee to be paid through the use of a stamp
142 insignia applied by metering machines. Such stamps or stamp
143 insignia are required and shall be sold, affixed, and
144 administered in the same manner as the stamps and stamp insignia
145 that are prescribed, prepared, and furnished for the taxes

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146 imposed elsewhere in this chapter. The division may prescribe
147 that payment of the fee imposed by this subsection and of the
148 tax imposed by s. 210.30 be by way of a single stamp or stamp
149 insignia, the value of which must be the combined value of such
150 fee and tax, and that the single stamp or stamp insignia be
151 distinguishable, by markings or colorings, from the stamp or
152 stamp insignia used on cigarette packages not subject to the fee
153 imposed by this subsection.

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

156 (4) SETTLING MANUFACTURER CERTIFICATION AND LIST.—

157 (a) By July 1, 2015, and by April 30 of each year
158 thereafter, each settling manufacturer shall certify to the
159 Attorney General, on a form prescribed by the Attorney General,
160 the cigarettes that are in its brand family. Such certification
161 shall be made for purposes of the settling manufacturer's
162 tobacco settlement agreement or other agreement described in
163 subparagraph (h)1. for the relevant year, including the
164 calculation of any payment obligation of the settling
165 manufacturer under that agreement in the volume and shares
166 determined under the agreement. Each settling manufacturer shall
167 update such certification within 30 calendar days after the date
168 of any change.

169 (b) By July 15, 2015, the division shall develop, maintain,
170 and publish on its website a directory listing all settling
171 manufacturers that have provided certifications under paragraph
172 (a) and their respective brand families as identified in the
173 certifications. The division shall update the directory as
174 necessary to add or remove a manufacturer or brand family and to

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175 ensure that the manufacturer is in compliance with this section.

176 (c) Cigarettes of a brand family that is not listed in the
177 directory are presumed to be nonsettling manufacturer cigarettes
178 subject to the fee imposed by subsection (3).

179 (5) REPORTS.—

180 (a) Each dealer, agent, and distributing agent required to
181 file a report under s. 210.09, and each distributor required to
182 file a return under s. 210.55, in addition to the information
183 required under those sections, shall include in the required
184 monthly report or return:

185 1. The number of individual nonsettling manufacturer
186 cigarettes contained in packages on which the dealer, agent,
187 distributing agent, or distributor affixed or was required to
188 affix a stamp or stamp insignia by the use of a metering machine
189 during the preceding month;

190 2. The amount of the fee imposed pursuant to subsection (3)
191 on cigarettes described in subparagraph 1.; and

192 3. Other information that the division considers necessary
193 to determine the amount of the fee imposed under subsection (3),
194 to enforce this section, or to provide the reports showing the
195 fees assessed on nonsettling manufacturer cigarettes as required
196 under subsection (3).

197 (b) The information required under paragraph (a) must be
198 itemized for the place of business of the dealer, agent,
199 distributing agent, and distributor, and by manufacturer and
200 brand family.

201 (c) The division shall enforce the requirement to report
202 information under this section in the same manner as the
203 requirement to deliver to or file with the division a report or

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204 return under this chapter.

205 (6) PENALTIES FOR NONPAYMENT.—The cigarettes of a
206 nonsettling manufacturer that fails to pay the fee imposed
207 pursuant to subsection (3) shall be treated as cigarettes for
208 which the tax assessed under this chapter has not been paid, and
209 all persons selling, receiving, purchasing, possessing,
210 consuming, handling, distributing, or using such cigarettes are
211 subject to the penalties imposed under ss. 210.18., 210.181, and
212 210.185.

213 (7) APPLICABILITY.—

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

217 (b) Except for ss. 210.011, 210.085, 210.095, 210.151,
218 210.1605, 210.1801, 210.185, 210.201, 210.276, 210.405, 210.45,
219 and 210.51, the provisions of this chapter apply to this section
220 to the extent that they do not conflict.

221 (c) The fee imposed pursuant to subsection (3) does not
222 apply to cigarettes of any subsequent participating
223 manufacturer, as defined in the Master Settlement Agreement,
224 which would otherwise be required to pay such fee until the
225 effective date of a credit amendment, and such cigarettes shall
226 be treated as settling manufacturer cigarettes until that time.

227 (8) RULE AUTHORITY.—The division may adopt rules to
228 administer this section, including rules that address reporting
229 requirements and imposition, collection, and enforcement of
230 fees.

231 Section 2. This act shall take effect July 1, 2015.