

Committee Substitute for Senate Bill No. 2198

An act relating to tobacco settlement agreements; amending s. 569.23, F.S.; providing definitions; including a parent of a signatory to a tobacco settlement agreement within provisions limiting security required in certain appeals; prescribing the security necessary to stay execution of judgments pending appeal in actions by certain former class action members against signatories to a tobacco settlement agreement and related entities; prescribing the form and manner of posting or paying such security, the level of appeals to which the security is applicable, the amount of the security based on the number of appeals, the amount of security in cases having multiple defendants, and changes in the amount of security based on changes in the number of appeals; providing for the stay of execution of a judgment when a case is appealed to a court outside this state; prescribing the amount of security necessary to stay execution of such a judgment; providing conditions under which claims may be made against security provided for an appeal; prescribing when a judgment is final; authorizing the clerk of the Supreme Court to collect fees related to maintenance of such security; expressing legislative intent for the clerk of the Supreme Court to maintain records on the number of appeals and amount of security; requiring a signatory to a tobacco settlement agreement and related entities to maintain and provide to the clerk of the Supreme Court an accounting of security provided for appeals; requiring such signatory or related entity to provide information to the clerk on certain civil actions filed against the signatory or related entity; providing for future expiration of security provisions related to actions by former class action members; permitting a court to order a defendant that dissipates assets to avoid payment of a judgment to increase the appeal security; providing for applicability; providing an effective date.

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

Section 1. Section 569.23, Florida Statutes, is amended to read:

569.23 Security bond requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.—

(1) As used in this section, the term “tobacco settlement agreement” means any settlement agreement, as amended, entered into by the state and one or more cigarette manufacturers in settlement of State of Florida v. American Tobacco Co., No. 95-1466AH (Fla. 15th Cir. Ct.). As used in this section, the term “security” means supersedeas bonds, other surety permitted by Florida law, or cash.

(2) In any civil action involving a signatory, or a successor, parent, or an affiliate of a signatory, ~~to a the tobacco settlement agreement, as defined in s. 215.56005(1)(f),~~ the security appeal bond to be furnished during the pendency of all appeals or discretionary appellate reviews, including reviews by

the United States Supreme Court, of any judgment in such litigation shall be set pursuant to applicable laws or court rules, except that the total cumulative value of all security required to stay the execution of the judgment bond for all defendants may not exceed \$100 million for all appellants collectively, regardless of the total value of the judgment.

(3)(a)1. In civil actions against a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part, the trial courts shall automatically stay the execution of any judgment in any such actions during the pendency of all appeals or discretionary appellate reviews of such judgment in Florida courts, upon provision of security as required in this paragraph. All security shall be provided through the posting with or payment into the registry of the clerk of the Supreme Court.

2. The total amount of security that must be provided for all appellants collectively with regard to a single judgment is equal to the lesser of the amount of the judgment to be stayed or the amount of security per judgment required based on the following tiers of judgments on appeal in the courts of this state at the time the security is provided:

<u>TIER - NUMBER OF JUDGMENTS</u>	<u>AMOUNT OF SECURITY PER JUDGMENT</u>	<u>MAXIMUM TOTAL ALL SECURITY</u>
<u>1-40</u>	<u>\$5,000,000</u>	<u>\$200,000,000</u>
<u>41-80</u>	<u>\$2,500,000</u>	<u>\$200,000,000</u>
<u>81-100</u>	<u>\$2,000,000</u>	<u>\$200,000,000</u>
<u>101-150</u>	<u>\$1,333,333</u>	<u>\$199,999,950</u>
<u>151-200</u>	<u>\$1,000,000</u>	<u>\$200,000,000</u>
<u>201-300</u>	<u>\$666,667</u>	<u>\$200,000,100</u>
<u>301-500</u>	<u>\$400,000</u>	<u>\$200,000,000</u>
<u>501-1,000</u>	<u>\$200,000</u>	<u>\$200,000,000</u>
<u>1,001-2,000</u>	<u>\$100,000</u>	<u>\$200,000,000</u>
<u>2,001-3,000</u>	<u>\$66,667</u>	<u>\$200,001,000</u>

3. In cases having multiple defendants, an individual appellant shall provide security in proportion to the percent or amount of liability specifically allocated against that appellant in the judgment, or, if liability is not specifically allocated in the judgment, for a share of the unallocated portion of the judgment determined by dividing the unallocated portion of the judgment equally among all defendants against whom the judgment is entered. Once an appellant has provided its required security with respect to a judgment, that appellant is entitled to a stay of that judgment regardless of whether other defendants in that case have provided the security required of them.

4. When the number of judgments on appeal changes so that the total is within a higher or lower tier, the amount of security required in each case shall change by operation of law, upon notice provided by any party to all other parties and upon deposit within 30 days after notice of any additional security required hereunder, from the amount of security previously posted to an amount consistent with the statutory appeal bond rights prescribed in

this paragraph. When the amount of security on deposit is changed pursuant to this subparagraph, the security shall be modified as follows:

a. If the security on deposit is in the form of a supersedeas bond or other surety, the appellant shall replace or supplement that supersedeas bond or other surety with security in the new amount as required by this paragraph.

b. If the security on deposit is in the form of cash, the clerk of the Supreme Court shall, as appropriate:

(I) Upon the request of the appellant and notice to all appellees affected, refund to the appellant the difference between the amount of security on deposit and the reduced amount of security required or hold the difference as a credit against future security to be posted by that appellant; or

(II) Record any additional cash provided by the appellant.

(b)1. In any action subject to this subsection, if there is no appeal or discretionary appellate review pending in a Florida court and an appellant exercises its right to seek discretionary appellate review outside of Florida courts, including a review by the United States Supreme Court, the trial court shall automatically stay the execution of the judgment in any such action during the pendency of the appeal, upon provision of security as required in this paragraph. All security shall be provided through the posting with or payment into the registry of the clerk of the Supreme Court of this state.

2. The amount of security shall be equal to the lesser of the amount of the judgment to be stayed or three times the security required to stay the execution of a judgment during all appellate review in Florida courts at the time appellate review is sought under this paragraph.

(c) A claim may not be made against the security provided by an appellant unless an appellant fails to pay a judgment in a case covered by this subsection within 30 days after the judgment becomes final. For purposes of this subsection, a judgment is "final" following the completion of all appeals or discretionary appellate reviews, including reviews by the United States Supreme Court. If an appellant fails to pay a judgment within such time period, the security for that judgment provided by that appellant shall be available to satisfy the judgment in favor of the appellee. Upon satisfaction of the judgment in any case, the clerk of the Supreme Court may refund any security on deposit with respect to that case to the appellant upon an order from the trial court confirming satisfaction of the judgment.

(d) The clerk of the Supreme Court shall collect fees for receipt of deposits under this subsection as authorized by ss. 28.231 and 28.24(10)(a). In addition, for as long as any cash remains on deposit with the clerk pursuant to this subsection, the clerk of the Supreme Court is entitled to regularly receive as an additional fee the net investment income earned thereon. The clerk shall use the services of the Chief Financial Officer, as needed, for the custody and management of all bonds, other surety, or cash posted or deposited with the clerk. All fees collected pursuant to this subsection shall be

deposited in the State Courts Revenue Trust Fund for use as specified by law.

(e)1. It is the intent of the Legislature that the clerk of the Supreme Court maintain a record of the number of appeals in Florida courts and all security posted with or paid into the registry of the Supreme Court under this subsection. It is further the intent of the Legislature that the clerk regularly update the records to reflect any revisions in the amount of previously posted or paid security.

2. A signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement shall maintain on a continuing basis an accounting of security provided under this subsection, including, but not limited to, the specific amount of security provided with respect to each specific judgment and the date on which it was provided, the amount and date of any adjustments upward or downward to security provided and the basis for the adjustment, and the date of any final disposition related to security. By July 15 of each year, the entity shall provide to the clerk of the Supreme Court an updated copy of the accounting reflecting activity through the immediately preceding June 30, in a manner prescribed by the Supreme Court. A verified copy of such accounting shall also be filed in each circuit court case in which each such judgment was entered.

3. By August 1, 2009, a signatory, or a successor, parent, or affiliate of a signatory, to a tobacco settlement agreement shall provide to the clerk of the Supreme Court a list of all civil actions, as of the date the list is provided and identified by case name and court case number, against the signatory, or a successor, parent, or affiliate of a signatory, brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part. A signatory, or a successor, parent, or affiliate of a signatory, shall provide to the clerk the same information on any additional actions filed within 60 days after the additional action is joined.

(f) This subsection expires December 31, 2012.

(4)(2) Notwithstanding subsections (2) and (3) ~~subsection (1)~~, if, after notice and hearing, a plaintiff proves by a preponderance of the evidence that a defendant who posted or paid security under this section ~~such bond or equivalent surety~~ is purposefully dissipating assets outside the ordinary course of business to avoid payment of the judgment, the court may enter necessary orders ~~as to that defendant~~ to protect the plaintiff, including an order that the security bond ~~or equivalent surety~~ be posted or paid in an amount up to the full amount of the judgment against that defendant.

(5)(3) This section does not apply to any past, present, or future action brought by the State of Florida against one or more signatories to the settlement agreement.

Section 2. This act shall take effect upon becoming a law, and applies to all judgments entered on or after that date.

Approved by the Governor June 16, 2009.

Filed in Office Secretary of State June 16, 2009.