

PCB FTC 09-01

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to tobacco settlement agreements; amending
 3 s. 569.23, F.S.; defining a term; requiring trial courts
 4 to stay the execution of all judgments in favor of certain
 5 former class action members during appellate proceedings
 6 upon the posting of a supersedeas bond or other surety by
 7 signatories, successors, or affiliates of a signatory to a
 8 tobacco settlement agreement applicable to all such
 9 judgments; limiting the total cumulative value of all
 10 supersedeas bonds or other surety to a certain amount;
 11 permitting a court to order a specific defendant that
 12 dissipates assets to avoid payment of a judgment to
 13 increase the surety; providing applicability; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 569.23, Florida Statutes, is amended to
 19 read:

20 569.23 Supersedeas bond requirements for tobacco
 21 settlement agreement signatories, successors, and affiliates.--

22 (1) As used in this section, the term "tobacco settlement
 23 agreement" means any settlement agreement, as amended, entered
 24 into by the state and one or more cigarette manufacturers in
 25 settlement of State of Florida v. American Tobacco Co., No. 95-
 26 1466AH (Fla. 15th Cir. Ct.).

27 (2) In any civil action involving a signatory, ~~or~~
 28 successor, or an affiliate of a signatory to a ~~the~~ tobacco

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29 settlement agreement, ~~as defined in s. 215.56005(1)(f)~~, the
 30 supersedeas appeal bond or other surety to be furnished during
 31 the pendency of all appeals or discretionary appellate reviews,
 32 including reviews by the United States Supreme Court, of any
 33 judgment in such litigation shall be set pursuant to applicable
 34 laws or court rules, except that the total cumulative value of
 35 all supersedeas bonds or other surety required to stay the
 36 execution of the judgment bond for all defendants may not exceed
 37 \$100 million for all appellants collectively, regardless of the
 38 total value of the judgment.

39 (3) (a) In civil actions against a signatory, successor, or
 40 affiliate of a signatory to a tobacco settlement agreement
 41 brought by or on behalf of persons who claim or have been
 42 determined to be members of a former class action that was
 43 decertified in whole or in part, the trial courts shall stay the
 44 execution of judgments in any such actions during the pendency
 45 of all appeals or discretionary appellate reviews, including
 46 reviews by the United States Supreme Court, upon the posting of
 47 supersedeas bonds or other surety by the appellants as required
 48 by applicable laws or court rules, except that such bonds or
 49 surety shall be deposited into the registry of the clerk of the
 50 Supreme Court, with evidence thereof to be provided to the Clerk
 51 of the Circuit Court in such form as may be directed by the
 52 Supreme Court acting in its administrative capacity. The total
 53 cumulative value of all supersedeas bonds or other surety
 54 required to stay the execution of all such judgments may not
 55 exceed \$100 million for all appellants collectively, regardless
 56 of the total value or number of the judgments. By operation of

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57 law, all appellees affected by this subsection shall be deemed
 58 co-beneficiaries of all such bonds or sureties in proportion
 59 with the amount of their respective judgments. Upon the posting
 60 by any individual appellant or all appellants collectively of
 61 supersedeas bonds or other surety having a total cumulative
 62 value of \$100 million, the trial courts shall stay the execution
 63 of judgments in other cases covered by this subsection during
 64 the pendency of all appeals or discretionary appellate reviews,
 65 including reviews by the United States Supreme Court, without
 66 requiring any additional supersedeas bonds or other surety
 67 except as may be provided below.

68 (b) No judgment or other moneys may be paid out of a
 69 supersedeas bond or other surety posted under (3) (a) above until
 70 30 days after the judgment upon which a claim is made becomes
 71 final. Proof of satisfaction of such judgment shall nullify
 72 such claim. If an appellant fails to pay a judgment in a civil
 73 action covered by this subsection within 30 days after the
 74 judgment becomes final any stay in favor of such appellant under
 75 operation of this subsection shall be lifted unless authorized
 76 by any court rule or law other than this subsection. For
 77 purposes of this paragraph a judgment becomes final on the later
 78 of the date of the judgment or the date of entry of an amended
 79 final judgment by the trial court following the completion of
 80 all appeals or discretionary appellate reviews, including
 81 reviews by the United States Supreme Court.

82 (c) The clerk of the Supreme Court shall collect fees for
 83 receipt of deposits under paragraph (a) as authorized by
 84 sections 28.231 and 28.24(10) (a), Florida Statutes. In

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85 addition, for as long as the bonds or other surety remain posted
 86 with the clerk pursuant to this subsection, the clerk of the
 87 Supreme Court shall regularly receive as an additional fee, the
 88 net investment income earned on any bonds or other surety
 89 deposited under this subsection. The clerk shall utilize the
 90 services of the Chief Financial Officer, as needed, for the
 91 custody and management of all bonds or other surety posted with
 92 the clerk. All fees collected pursuant to this subsection shall
 93 be deposited in the State Courts Revenue Trust Fund for use as
 94 specified by law.

95 (4) ~~(2)~~ Notwithstanding subsections (2) and (3) ~~subsection~~
 96 ~~(1)~~, if, after notice and hearing, a plaintiff proves by a
 97 preponderance of the evidence that a defendant who posted a
 98 supersedeas ~~such~~ bond or other ~~equivalent~~ surety is purposefully
 99 dissipating assets outside the ordinary course of business to
 100 avoid payment of the judgment, the court may enter necessary
 101 orders as to that defendant to protect the plaintiff, including
 102 an order that the bond or equivalent surety be posted in an
 103 amount up to the full amount of the judgment against that
 104 defendant.

105 (5) ~~(3)~~ This section does not apply to any past, present,
 106 or future action brought by the State of Florida against one or
 107 more signatories to the settlement agreement.

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