

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 2198

INTRODUCER: Judiciary Committee and Senator Haridopolos

SUBJECT: Tobacco Settlement Agreements

DATE: April 23, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

<b>Please see Section VIII. for Additional Information:</b>	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

**I. Summary:**

This bill provides that in civil actions against a signatory, successor, parent, or affiliate of a signatory (hereinafter appellants) to a tobacco settlement agreement, brought by persons who have been decertified from a class action lawsuit, the trial court must automatically stay the execution of any judgments during the pendency of all appeals, upon provision of security to the clerk of the Florida Supreme Court. Security must be provided by each appellant individually, in an amount based upon the appellant's proportionate share of liability in all cases pending appeal plus twice the statutory rate of interest. However, the total security for an individual appellant may not exceed the greater of either \$5 million, or \$100 million multiplied by the appellant's percentage share of all payments made to Florida in 2008 under the tobacco settlement agreement. Regardless of the total value or number of judgments, the total cumulative value of all security may not exceed \$100 million for all appellants collectively.

The bill provides that each appellee whose judgment against an appellant is stayed is considered a co-beneficiary of all security provided by that appellant. If an appellant does not pay a judgment within 30 days after the judgment becomes final, then the stay of execution in favor of that appellant is immediately lifted, and any judgment creditor against whom a stay of execution

was in effect may petition the court to equitably distribute any security that had been provided by the appellant.

The bill authorizes the clerk of the Florida Supreme Court to collect fees for receipt of security and provides that the clerk is entitled to receive the net investment income earned on such security. All fees collected are to be deposited in the State Courts Revenue Trust Fund.

The bill also provides that if a plaintiff proves that a defendant who provides security with the clerk of the Supreme Court is purposefully dissipating assets to avoid payment of the judgment, the court may enter any necessary order as to that defendant to protect the plaintiff.

This bill substantially amends section 569.23, Florida Statutes.

## II. Present Situation:

### Tobacco Settlement Background

In 1994, Mississippi became the first state to file suit against major tobacco manufacturers.<sup>1</sup> In February 1995, Florida followed Mississippi's lead and sued a number of tobacco manufacturers and other defendants asserting various claims for monetary and injunctive relief on behalf of the state.<sup>2</sup> On March 3, 1996, Florida, along with West Virginia, Mississippi, Massachusetts, and Louisiana, settled all of its claims against the Liggett Group.<sup>3</sup> In August 1997, the "Big Four"<sup>4</sup> tobacco companies entered into a landmark settlement agreement with Florida, known as the Florida Settlement Agreement (FSA), for all past, present, and future claims by the state, including reimbursement of Medicaid expenses, fraud, RICO, and punitive damages.<sup>5</sup>

Under the FSA, Florida was to receive \$11.3 billion over the first 25 years of the agreement, and payments are to continue in perpetuity.<sup>6</sup> The annual payments are based on factors including the total volume of U.S. cigarette sales, each company's share of the national market, net operating profits, and consumer price indices.<sup>7</sup> Additionally, Florida negotiated a "Most Favored Nations" clause in the FSA, which provides that Florida will obtain treatment at least as relatively favorable as a non-federal governmental entity.<sup>8</sup> Under the clause, Florida received an additional \$1.7 billion over the first five years of the settlement because Minnesota had settled on terms more favorable than Florida's.<sup>9</sup> Through April 2004, the state had received approximately \$4.1

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<sup>1</sup> Nat'l Conference of State Legislatures, *Summary of the Attorneys General Master Tobacco Settlement Agreement* (Mar. 1999), available at <http://www.ncsl.org/statefed/tmsasumm.htm> (last visited April 18, 2009).

<sup>2</sup> Comm. on Regulated Industries, Fla. Senate, *Florida Tobacco Settlement and Nonsettling Manufacturers*, 1 (Report No. 2005-157) (Nov. 2004), available at [http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim\\_reports/pdf/2005-157rilong.pdf](http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-157rilong.pdf) (last visited April 18, 2009).

<sup>3</sup> *Id.*; see also Nat'l Conference of State Legislatures, *supra* note 1.

<sup>4</sup> The "Big Four" are Philip Morris, Inc., R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., and Lorillard Tobacco Co.

<sup>5</sup> *State v. American Tobacco Co.*, Case No. 95-1466 AH (Fla. 15th Cir. Ct. 1997).

<sup>6</sup> Comm. on Regulated Industries, *supra* note 2, at 1. Florida now receives 5.5 percent of \$8 billion, unadjusted, in perpetuity. See *State v. American Tobacco Co.*, Case No. 95-1466 AH.

<sup>7</sup> Comm. on Regulated Industries, *supra* note 2, at 2.

<sup>8</sup> *State v. American Tobacco Co.*, Case No. 95-1466 AH.

<sup>9</sup> Comm. on Regulated Industries, *supra* note 2, at 1.

billion under the settlement agreement.<sup>10</sup> The settlement payment for Fiscal Year 2008 was approximately \$380 million.<sup>11</sup>

The FSA also contained nonmonetary provisions, such as restrictions on billboard and transit advertisements, merchandise promotions, product placement, and lobbying relating to all tobacco products.<sup>12</sup>

Subsequent to Florida's settlement, the "Big Four" tobacco companies also entered into a master settlement agreement (MSA) with the remaining 46 states, the District of Columbia, and five U.S. territories on November 23, 1998.<sup>13</sup> Pursuant to the MSA, participating states were to receive between \$212 and \$246 billion over the first 25 years.<sup>14</sup> Payments made under the MSA are subject to a "previously settled states reduction," where the payments are reduced by approximately 12 percent for payments due between 2007 and 2018, and are reduced by 11 percent for payments due after 2018.<sup>15</sup>

Several factors have been identified that affect the stability of the tobacco settlement payments. One such factor is the cost of individual and class action lawsuits by private citizens against tobacco companies. On March 21, 2003, an Illinois court ordered Philip Morris, Inc., to pay \$7 billion in compensatory damages and \$3 billion in punitive damages in a class action lawsuit.<sup>16</sup> The court also ordered Philip Morris, Inc., to post a \$12 billion bond in order to stay the execution of the judgment past the initial 30 days from the date of the order.<sup>17</sup> Subsequently, there was speculation that Philip Morris, Inc., would not be financially able to post the bond and might seek bankruptcy protection, which would possibly require Philip Morris, Inc., to default on its installment of the MSA. Accordingly, Philip Morris, Inc., filed a Request for Reduction of Bond and Stay of Enforcement of the Judgment.<sup>18</sup> The Attorneys General of 37 states and the National Conference of State Legislatures filed an amicus brief urging the court to reduce the bond, so as to not interfere with the states' vital interests. The court granted the request by Philip Morris, Inc., and reduced the bond to \$6 billion, to be paid in installments, and no tobacco settlement payments were missed by Philip Morris, Inc.<sup>19</sup>

One of the most recognized lawsuits in Florida dealing with tobacco companies is *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (2006). The procedural history of the case carries over 10 years. The *Engle* case began in 1994, when a trial court certified as a nationwide<sup>20</sup> class action a group of smokers (Engle Class), who sought compensatory and punitive damages against major

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<sup>10</sup> *Id.* at 7.

<sup>11</sup> See Marc Caputo, *Big Tobacco Moves Closer to Florida Pack Tax Hike*, ST. PETERSBURG TIMES, Dec. 15, 2008; Conversation with Keith Teel, attorney for Philip Morris, Inc. (April 17, 2009).

<sup>12</sup> Comm. on Regulated Industries, *supra* note 2, at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.*

<sup>16</sup> *Price v. Philip Morris, Inc.*, 2003 WL 22597608, \*29 (Ill. Cir. 2003), *rev'd*, 848 N.E.2d 1 (Ill. 2005).

<sup>17</sup> *Id.* at \*30.

<sup>18</sup> See Order on Def.'s Req. for Reduction of Bond and Stay of Enforcement of the Judgment (April 14, 2003), available at <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/tobacco/pricepm41403bo.pdf> (last visited April 18, 2009).

<sup>19</sup> *Id.*

<sup>20</sup> The class was reduced to include only Florida smokers based on an appeal by the tobacco companies challenging the order certifying the *Engle* class. See *R.J. Reynolds Tobacco Co v. Engle*, 672 So. 2d 39 (Fla. 3d DCA 1996).

tobacco companies (Tobacco). In 2000, the trial court entered judgment in favor of the Engle Class, ordering Tobacco to pay \$145 billion in punitive damages. Tobacco appealed the judgment and the appellate court held that the trial court had improperly certified the class and reversed the judgment. Then the Engle Class appealed to the Florida Supreme Court. In *Engle*, the Florida Supreme Court held that the \$145 billion judgment should not have been entered because an award of compensatory damages must be determined before a determination of punitive damages, so that the award may be reviewed for reasonableness.<sup>21</sup> The Court also held that the trial court did not abuse its discretion in initially certifying the class; however, it held that continued class action treatment was not feasible because of the individualized issues such as causation, comparative fault, and damages.<sup>22</sup> Additionally, the Court authorized the individual plaintiffs within the class to proceed with individual lawsuits, if filed within one year of the judgment.<sup>23</sup>

### **Tobacco Supersedeas Bond Caps**

In 2000, prior to the trial court in *Engle* entering the \$145 billion judgment, the Legislature enacted s. 768.733, F.S., relating to bonds in class action lawsuits.<sup>24</sup> Section 768.733, F.S., provides:

(1) In any civil action that is brought as a certified class action, the trial court, upon the posting of a bond or equivalent surety as provided in this section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive damages pending completion of any appellate review of the judgment.

(2) The required bond or equivalent surety acceptable to the court for imposition of the stay shall be the lower of:

(a) The amount of the punitive-damages judgment, plus twice the statutory rate of interest; or

(b) Ten percent of the net worth of the defendant . . . ;

provided that in no case shall the amount of the required bond or equivalent surety exceed \$100 million, regardless of the amount of punitive damages.

As a result of this legislation, Tobacco's bond to appeal the \$145 billion judgment in *Engle* was limited to \$100 million.

After the *Price* case in Illinois, where the court entered a judgment for \$7 billion in compensatory damages, there was additional concern that, since s. 768.733, F.S., only applied to judgments for punitive damages, a defendant may still have to post a bond that could have the potential to bankrupt a company. While tobacco settlement payments under the FSA are to be made in perpetuity, there was concern by some that if the tobacco companies declare bankruptcy they would default on their obligations under the FSA. In an attempt to balance the competing interests between judgment creditors, the right to appeal large judgments, and the stability of the settlement payments to the state under the FSA, the Legislature enacted s. 569.23, F.S., in 2003.

<sup>21</sup> *Engle*, 945 So. 2d at 1265.

<sup>22</sup> *Id.* at 1267-68.

<sup>23</sup> *Id.* at 1277.

<sup>24</sup> Chapter 2000-128, s. 4, Laws of Fla.

Section 569.23, F.S., provides:

(1) In any civil action involving a signatory or successor or an affiliate of a signatory to the tobacco settlement agreement . . . , the appeal bond to be furnished during the pendency of all appeals or discretionary appellate reviews of any judgment in such litigation shall be set pursuant to applicable laws or court rules, except that the total bond for all defendants may not exceed \$100 million, regardless of the total value of the judgment.

In 2006, the Florida Supreme Court decertified a class action lawsuit, but authorized the members of the class to bring individual lawsuits within a certain time period.<sup>25</sup> As a result of this case, there are approximately 3,000 separate lawsuits in which damages may be awarded. Prior to this decertification, the class action suit would have been covered by the supersedeas bond cap in s. 569.23, F.S. However, the separate 3,000 cases are not currently covered by s. 569.23, F.S., which would mean that the tobacco companies may have to post supersedeas bonds in up to 3,000 separate cases that could cumulatively total billions of dollars.<sup>26</sup>

### **Supersedeas Bonds Generally**

Rule 9.310 of the Florida Rules of Appellate Procedure, governing stays pending review, provides that a party seeking to stay an order pending review must file a motion in the court having continuing jurisdiction. A stay pending review may be conditioned on the posting of a good and sufficient bond. Rule 9.310 provides an exception for money judgments. Specifically, if the judgment is solely for the payment of money, a party may obtain an automatic stay pending review by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments.<sup>27</sup> The statutory rate of interest is set by the Chief Financial Officer pursuant to s. 55.03, F.S. The interest rate for 2009 is 8 percent per annum or .0002192 per day.<sup>28</sup>

A good and sufficient bond is defined as “a bond with a principal and surety company authorized to do business in the State of Florida, or cash deposited in the circuit court clerk’s office.”<sup>29</sup> The bond is conditioned on the party paying or complying with the order in full, including costs, if the review is dismissed or the order is affirmed. A stay entered by a court shall remain in effect during the pendency of all review proceedings in Florida courts.<sup>30</sup>

Supersedeas bonds are generally posted with the clerk of the court in the county where the trial court judgment was entered. The clerk of the circuit court is entitled to fees for examining bond

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<sup>25</sup> *Engle*, 945 So. 2d at 1277.

<sup>26</sup> In the first four cases that have been tried, the first case resulted in a \$30 million judgment for the plaintiff, the second an \$8 million judgment for the plaintiff, the third approximately a \$3.5 million judgment for the plaintiff, and in the fourth case the tobacco industry prevailed. Conversation with Keith Teel, *supra* note 11.

<sup>27</sup> Fla. R. App. P. 9.310(b).

<sup>28</sup> Fla. Dep’t of Financial Servs., *Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes*, <http://www.fldfs.com/aadir/interest.htm> (last visited April 18, 2009).

<sup>29</sup> Fla. R. App. P. 9.310(c).

<sup>30</sup> Fla. R. App. P. 9.310(e).

certificates issued by surety companies and for receiving registry deposits, which occurs if a party uses cash as a supersedeas bond.<sup>31</sup>

### III. Effect of Proposed Changes:

This bill amends s. 569.23, F.S., relating to bond requirements for tobacco settlement agreement signatories, successors, and affiliates. Specifically, the bill provides that in all civil actions against a signatory, successor, parent, or affiliate of a signatory (hereinafter appellants) to a tobacco settlement agreement brought by or on behalf of persons who have been decertified from a class action lawsuit, the trial court must automatically stay the execution of any judgments during the pendency of all appeals or discretionary appellate review, including reviews by the U.S. Supreme Court.

In order to qualify for the automatic stay, the appellant must post a supersedeas bond, other surety, or cash (security) in an amount based upon or equal to the appellant's proportionate share of liability in all cases pending appeal plus twice the statutory rate of interest with the clerk of the Florida Supreme Court. However, an individual appellant is not required to provide total security in excess of the greater of \$5 million, or \$100 million multiplied by the appellant's percentage share of all payments made to the state in 2008 under the Florida Tobacco Settlement. The total cumulative value of all security may not exceed \$100 million for all appellants collectively, regardless of the total value or number of judgments.

The bill defines "appellant's proportionate share of liability" as "the total liability for a judgment where there is a single defendant or appellant, and, in cases where there are multiple defendants or appellants, any amount specifically allocated against a particular defendant or appellant in the judgment, and, where liability is not specifically allocated in whole or in part among multiple defendants or appellants, the amount of the unallocated portion of the judgment divided equally among the defendants or appellants."

An appellant who has made payments into the registry of the clerk of the Supreme Court may petition the circuit court in any case still pending or the Supreme Court to refund any amount deposited that exceeds the total of the appellant's proportionate share of liability. The refund must be ordered, and made within 60 days of the order, upon a showing that the security provided is no longer necessary to pay outstanding judgments against the appellant.

The bill provides that each appellee whose judgment against an appellant is stayed is considered a co-beneficiary of all security provided by that appellant. If an appellant does not pay a judgment within 30 days after the judgment becomes final, then:

- Any stay of execution in favor of that appellant is immediately lifted, unless the stay is provided pursuant to another provision of law, rule, or judicial order; and
- Any judgment creditor against whom a stay of execution was in effect may petition the trial court or Florida Supreme Court to equitably distribute any security that had been provided by the appellant.

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<sup>31</sup> Section 28.24(10), F.S.

The bill authorizes the clerk of the Supreme Court to collect fees for receipt of security as authorized by ss. 28.231 and 28.24(10)(a), F.S.<sup>32</sup> Additionally, the clerk is entitled to receive, as an additional fee, the net investment income earned on any cash provided as security. All fees collected are to be deposited in the State Courts Revenue Trust Fund. The bill requires the clerk to utilize the services of the Chief Financial Officer, as needed, for the custody and management of the security posted or deposited with the clerk.

No later than October 1, 2009, the Department of Revenue (DOR) must provide to the clerk of the Supreme Court a report showing the total tobacco settlement payments received by the state in 2008 and the percentage of that total received on behalf of each settling tobacco manufacturer. Upon request by certain judicial officers or any appellant that has provided security, the clerk of the Supreme Court shall certify to the trial court the amount of security provided by a subject appellant and whether such amount equals the maximum amount required by the bill, determined in reliance upon the report by DOR.

The bill defines “tobacco settlement agreement” as “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. 1996).”

The bill also provides that if a plaintiff proves that a defendant who provided security with the clerk of the Supreme Court is purposefully dissipating assets to avoid payment of the judgment, the court may enter any necessary order *as to that defendant* to protect the plaintiff.

The bill makes technical and conforming changes to the statute governing bond requirements for signatories to the tobacco settlement agreement.

The bill provides that the act shall take effect upon becoming a law, and applies to all judgments entered on or after that date.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>32</sup> Section 28.231, F.S., provides that the clerk of any state appellate or county or state trial court shall receive the same compensation as clerks of the circuit court for similar services. Section 28.24(10)(a), F.S., relating to service charges by the clerk of the circuit court, permits the clerk to receive 3 percent of the first \$500 received into the registry of the court and 1.5 percent for every \$100 after that.

**D. Other Constitutional Issues:**

The Legislature has the exclusive power to enact substantive laws, while article V, section 2 of the Florida Constitution gives the Florida Supreme Court the power to “adopt rules for the practice and procedure in all courts.” This bill may be challenged on a claim that it violates the separation of powers doctrine.<sup>33</sup>

Rule 9.310 of the Florida Rules of Appellate Procedure sets forth the requirements for obtaining a stay of execution of a monetary judgment pending review. Specifically, a party may obtain an automatic stay by posting a bond equal to the principle amount of the judgment plus twice the statutory rate of interest on judgments. This bill provides that in order to qualify for an automatic stay pending review, an appellant must provide security to the clerk of the Supreme Court, the total cumulative value of which may not exceed \$100 million for all appellants collectively, regardless of the total value or number of judgments.

It is not always clear what constitutes substantive law versus practice and procedure. Generally, substantive laws create, define, and regulate rights, whereas court rules of practice and procedure prescribe the method of process by which a party seeks to enforce substantive rights or obtain redress.<sup>34</sup> Courts have tended to decide the distinction on a case-by-case basis, often finding the following types of provisions unconstitutional:

- Provisions regarding timing and sequence of court procedures,
- Provisions creating expedited proceedings,
- Provisions issuing mandates to the courts to perform certain functions, and
- Provisions attempting to supersede or modify existing rules of court.<sup>35</sup>

To the extent a court views this provision of the bill as an encroachment on the court’s procedural rule-making authority, it may come under constitutional scrutiny.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill provides that an appellant who is part of the Florida tobacco settlement agreement (FSA) can receive an automatic stay of execution on any judgments in civil actions brought by persons who have been decertified from a class action lawsuit, if the

<sup>33</sup> See FLA. CONST. art. II, s. 3.

<sup>34</sup> *Haven Fed. Savings & Loan Ass’n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991).

<sup>35</sup> See *Military Park Fire Control Tax District No. 4 v. DeMarois*, 407 So. 2d 1020 (Fla. 4th DCA 1981) (creating priorities among types of civil matters to be processed or appealed); *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000) (timing and sequence of court procedures); and *Haven Fed. Savings & Loan Ass’n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991), and *Watson v. First Florida Leasing, Inc.*, 537 So. 2d 1370 (Fla. 1989) (attempting to supersede or modify existing rules of court).



appellant posts a supersedeas bond, other surety, or cash, not to exceed \$100 million for all appellants collectively and regardless of the total value or number of judgments. Although the fiscal impact on the private sector is indeterminate at this time,<sup>36</sup> the bill may save tobacco companies that are a part of the FSA money by placing a cap on the total amount of the bond. The bill should not affect the recovery of private plaintiffs because the tobacco companies must still be capable of paying all judgments against them.<sup>37</sup>

### C. Government Sector Impact:

The bill has no direct impact on the state or the Department of Legal Affairs.<sup>38</sup> However, the bill may provide an indirect positive fiscal impact to the state by creating a cap on security. As discussed after *Price v. Philip Morris Inc.*, 2003 WL 22597608 (Ill. Cir. 2003), if a plaintiff receives a large judgment against a tobacco company and the tobacco company must post a supersedeas bond for the full amount of the judgment, the company may be forced to file bankruptcy. If a tobacco company that has entered into the Florida Settlement Agreement declares bankruptcy, the state may not be able to collect its money pursuant to the settlement.<sup>39</sup>

## VI. Technical Deficiencies:

The bill provides that the security required by an appellant to stay the execution of a judgment can be in the form of a supersedeas bond, other surety, or cash. However, on line 80, the bill references only “supersedeas bonds or other surety.” It appears that “cash” has been unintentionally left out of the bill in that sentence.

## VII. Related Issues:

Starting on line 74, the bill provides that, if *any* individual appellant provides the maximum security required by the bill, the trial court shall stay the execution of judgments *in all other cases* during the pendency of all appeals. The way the bill is written, it appears that if one appellant reaches its cap, then all other cases, regardless of whether the cases are against that specific appellant or another appellant, are stayed. The Legislature may wish to amend the bill to read: “Upon the provision by any individual appellant of the maximum security required by this subsection, the trial courts shall stay the execution of judgments in all other cases *against that appellant* during the pendency of all appeals . . .”

Throughout the bill, the terms “trial court” and “circuit court” are used interchangeably. For example, on line 117 of the bill, the term “trial court” is used, but on line 124 “circuit court” is used. The Legislature may wish to amend the bill to make it consistent throughout.

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<sup>36</sup> Dep’t of Legal Affairs, *Senate Bill 2198: Relating to Tobacco Settlement Agreements* (Feb. 18, 2009) (on file with the Senate Committee on Judiciary).

<sup>37</sup> See Fla. R. App. P. 9.310(c)(2) (providing that a condition for posting a bond is to be able to pay the order in full if review is dismissed or the order is affirmed on appeal).

<sup>38</sup> Dep’t of Legal Affairs, *supra* note 36.

<sup>39</sup> See letter to Representative Dean Cannon from Attorney General Bill McCollum (Feb. 4, 2009) (on file with the Senate Committee on Judiciary).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on April 21, 2009:**

The committee substitute:

- Defines the term “appellant’s proportionate share of liability”;
- Permits an appellant to provide cash as a form of security;
- Requires all security to be deposited and maintained by the clerk of the Florida Supreme Court;
- Provides that an individual appellant is not required to provide security in excess of the greater of either \$5 million, or \$100 million multiplied by the appellant’s percentage share of all payments made to the state in 2008 under the tobacco settlement agreement;
- Provides that each appellee whose judgment against an appellant is stayed is deemed a co-beneficiary of all security provided by that appellant;
- Authorizes an appellant to petition the circuit court where a case is still pending or the Supreme Court to refund any amount of security deposited that exceeds the total of the appellant’s proportionate share of liability. Requires such a refund to be ordered if the security is no longer necessary and requires the refund to be done within 60 days after such an order;
- Provides consequences for failing to pay a judgment within 30 days of it becoming final;
- Authorizes the clerk of the Supreme Court to collect fees, which are to be deposited into the State Courts Revenue Trust Fund;
- Requires the Department of Revenue to provide a report showing the total tobacco settlement payments received by the state in 2008 and the percentage of that total received on behalf of each settling manufacturer; and
- Makes technical and conforming changes.

- B. **Amendments:**

None.