By Senator Altman

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A bill to be entitled

An act relating to cigarette products of nonsettling manufacturers; creating s. 210.23, F.S.; providing the purpose of the act; creating s. 210.232, F.S.; defining terms; creating s. 210.234, F.S.; imposing a fee on the sale, receipt, purchase, possession, consumption, handling, distribution, and use of nonsettling manufacturer cigarettes that are required to have a stamp affixed or stamp insignia applied to the package of cigarettes on which tax is otherwise required to be paid; providing that the fee imposed is in addition to any other privilege, license, fee, or tax required or imposed by state law; prescribing methods to affix a stamp or insignia to the tobacco products; creating s. 210.236, F.S.; providing the fee rate for nonsettling manufacturers; creating s. 210.238, F.S.; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to post a directory listing of all settling manufacturers that have provided accurate certifications of their products in order to calculate their payments under the tobacco settlement agreement for the relevant year on the Internet website of the division; providing that any cigarette of a brand family not on the directory list be presumptively considered a nonsettling manufacturer product; creating s. 210.240, F.S.; requiring each dealer, agent, and distributing agent to file a report; requiring the report to include certain specified information; creating s. 210.245, F.S.; providing penalties for a nonsettling manufacturer that fails to pay the mandated fees; creating s. 210.246, F.S.; providing for application of the act; creating s. 210.248, F.S.; authorizing the division to adopt rules; creating s. 210.249, F.S.; providing conditions for imposing the fee on subsequent participating manufacturers who already make payments on Florida sales of cigarettes pursuant to the master settlement agreement; defining terms; providing an effective date.

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

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

210.23 Purpose.—The purpose of ss. 210.23-210.249 is to:

(1) Prevent nonsettling manufacturers from undermining this state’s policy of discouraging underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes of other manufacturers.

(2) Protect the tobacco settlement agreement and its funding, which has been reduced because of the growth of sales of nonsettling manufacturer cigarettes, by recouping for this state revenue that is lost because of sales of cigarettes by nonsettling manufacturers of cigarettes.

(3) Provide funding to enforce and administer any legislation relating to nonsettling manufacturers.

(4) Provide funding for any other purpose the Legislature determines.

Section 2. Section 210.232, Florida Statutes, is created to read:

210.232 Definitions.—As used in ss. 210.23-210.249, the term:

(1) “Agent” has the same meaning as in s. 210.01.

(2) “Brand family” means each style of cigarettes sold under a common brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of production identification.

(3) “Cigarette” has the same meaning as in s. 210.01.

(4) “Dealer” has the same meaning as in s. 210.01(5) and (6).

(5) “Distributing agent” has the same meaning as in s. 210.01.

(6) “Distributor” has the same meaning as in s. 210.25.

(7) “Division” has the same meaning as in s. 210.01.

(8) “Manufacturer” means a person who manufactures, fabricates, or assembles cigarettes or cigarette tobacco products for sale or distribution. For purposes of ss. 210.23-210.249, the term includes a person who is the first importer into the United States of cigarettes manufactured outside the United States.

(9) “Nonsettling manufacturer” means a manufacturer of cigarettes which is not a settling manufacturer.

(10) “Nonsettling manufacturer cigarettes” means cigarettes that are not manufactured by a settling manufacturer.

(11) “Settling manufacturer” means a manufacturer of

cigarettes which:

(a) Signed one of the tobacco settlement agreements before July 1, 2008; or

(b) Has voluntarily entered into an agreement with this state, approved by the division, agreeing to terms similar to those contained in the tobacco settlement agreement described in paragraph (13)(a), including making annual payments to the state with respect to the sale, receipt, purchase, possession, consumption, handling, distribution, and use in this state of its cigarettes equal to at least the amount of the fee that would have been due on such cigarettes under ss. 210.23-210.249 for the relevant year if the manufacturer were a nonsettling manufacturer.

(12) “Settling manufacturer cigarettes” means cigarettes of a brand family that a settling manufacturer certifies under s. 210.238 is to be deemed its brand family for purposes of calculating that settling manufacturer’s payments under the tobacco settlement agreement or other agreement described in paragraph (11)(b) for the relevant year, including for purposes of calculating any payment obligations of that settling manufacturer under that agreement, or any other cigarettes that are included in calculating payments due to be made by a settling manufacturer under the tobacco settlement agreement described in paragraph (13)(a) or other agreement described in paragraph (11)(b).

(13) “Tobacco settlement agreement” means:

(a) The settlement agreement entered into on August 25, 1997, in settlement of State of Florida v. American Tobacco Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996), and under which the

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settling manufacturer undertook payment obligations to the state; or

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

Section 3. Section 210.234, Florida Statutes, is created to read:

210.234 Fee imposed.—

(1) A fee is imposed on the sale, receipt, purchase, possession, consumption, handling, distribution, and use in this state of nonsettling manufacturer cigarettes that are required to have a stamp affixed or stamp insignia applied to a package of those cigarettes under this chapter or on which tax is otherwise required to be paid under this chapter.

(2) The fee imposed by this section does not apply to cigarettes made by a settling manufacturer.

(3) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(4) The fee imposed by ss. 210.23-210.249 shall be collected from distributors, dealers, agents, and distributing agents of nonsettling manufacturer cigarettes or from other persons or entities from whom the tax imposed by this chapter on such nonsettling manufacturer cigarettes may be collected under this chapter and in the manner provided by this chapter. The provisions of ss. 210.01, 210.02, 210.021, 210.03, 210.04, 210.05, 210.06, 210.07, 210.08, 210.09, 210.10, 210.11, 210.12, 210.13, 210.14, 210.15, 210.16, 210.161, 210.18, 210.181, 210.19, 210.20, 210.22, 210.25, 210.30, 210.31, 210.35, 210.40,

210.50, 210.55, 210.60, 210.65, 210.67, 210.70, and 210.75, so far as lawful or practicable, apply to the fee imposed by ss. 210.23-210.249 and to the collection thereof as if fully set out in ss. 210.23-210.249. However, any one or more sections may not apply to the extent the section conflicts with ss. 210.23-210.249.

(5) With respect to nonsettling manufacturer cigarettes, the division shall prescribe, prepare, and furnish stamps of such denominations and quantities as may be necessary for the payment of the fee imposed by ss. 210.23-210.249, and may also permit the fee to be paid through the use of a stamp insignia to be applied by metering machines. Such stamps or stamp insignia are required and shall be sold, affixed, and administered in the same manner as the stamps and stamp insignia that are prescribed, prepared, and furnished for the taxes imposed pursuant to other provisions of this chapter. The division may prescribe that payment of the fee imposed by ss. 210.23-210.249 and the tax imposed by s. 210.30 shall be by way of a single stamp or stamp insignia whose value shall be the combined value of such fee and tax, and which shall be identifiable with such markings or colorings as may be necessary to distinguish the stamp or stamp insignia from the stamp or insignia used on cigarette packages not subject to the fee imposed by ss. 210.23-210.249.

Section 4. Section 210.236, Florida Statutes, is created to read:

210.236 Rate of fee.—A fee is imposed at the rate of 2.6 cents for each nonsettling manufacturer cigarette.

Section 5. Section 210.238, Florida Statutes, is created to read:

210.238 Settling manufacturer certification and list.—

(1) By July 1, 2013, and annually thereafter not later than the 30th day of April in each year, each settling manufacturer shall certify to the Attorney General, on a form prescribed by the Attorney General, the names of the brand families that are to be deemed its cigarettes for purposes of its tobacco settlement agreement or other agreement described in s. 210.232(11)(b) for the relevant year, including for purposes of calculating any payment obligations of that settling manufacturer under that agreement in the volume and shares determined under the agreement. A settling manufacturer may not include a brand family in such certification if it does not deem sales of cigarettes of that brand family in this state to be its cigarettes for purposes of the master settlement agreement between 52 states and territories and participating cigarette manufacturers. Each settling manufacturer shall update such information in the event of any change within 30 calendar days after the date of the change.

(2) By July 15, 2013, the division shall develop, maintain, and publish on its Internet website a directory listing of all settling manufacturers that have provided accurate certifications under subsection (1). The directory shall list the brand families of such settling manufacturers included in such certifications. The division shall update the directory as necessary in order to add or remove a manufacturer or brand family and keep the directory in conformity with the requirements of ss. 210.23-210.249.

(3) The division shall provide the list to each dealer,

agent, or distributing agent authorized to affix stamps under this chapter, to each distributor, and to any other person upon request.

(4) Cigarettes of a brand family that is not on the directory list shall be presumptively considered nonsettling manufacturer cigarettes to which the fee imposed by ss. 210.23-210.249 applies.

Section 6. Section 210.240, Florida Statutes, is created to read:

210.240 Reports.—

(1) Each dealer, agent, and distributing agent required to file a report under s. 210.05 or s. 210.09, and each distributor required to file a return under s. 210.55 or s. 210.60, shall, in addition to the information required by those sections, include in that required report or return each month, as appropriate:

(a) The number of individual nonsettling manufacturer cigarettes in packages on which the dealer, agent, distributing agent, or distributor affixed or was required to affix a stamp or stamp insignia by the use of a metering machine during the preceding month;

(b) The amount of the fee imposed by ss. 210.23-210.249 paid on cigarettes described in paragraph (a); and

(c) Any other information that the division considers necessary or appropriate to determine the amount of the fee imposed by ss. 210.23-210.249, to enforce ss. 210.23-210.249, or to provide the reports showing fees paid for nonsettling manufacturer cigarettes as required by s. 210.234.

(2) The information required under subsection (1) must be

itemized for each place of business and by manufacturer and brand family.

(3) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the division a report or return required under this chapter.

Section 7. Section 210.245, Florida Statutes, is created to read:

210.245 Penalties for noncompliance.—Nonsettling manufacturer cigarettes subject to any fee imposed by ss. 210.23-210.249, but upon which the fee has not been paid, shall be treated as cigarettes for which the tax assessed by this chapter has not been paid, and all persons selling, receiving, purchasing, possessing, consuming, handling, distributing, or using such cigarettes are subject to all penalties imposed by this chapter for violations of this chapter.

Section 8. Section 210.246, Florida Statutes, is created to read:

210.246 Application.—Sections 210.23-210.249 apply without regard to s. 210.06(5) or any other law that might be read to create an exemption for interstate sales.

Section 9. Section 210.248, Florida Statutes, is created to read:

210.248 General powers of the Division of Alcoholic Beverages and Tobacco.—The Division of Alcoholic Beverages and Tobacco may adopt rules to administer ss. 210.23-210.249, including rules that address the imposition, collection, and enforcement of the fees and required reporting.

Section 10. Section 210.249, Florida Statutes, is created to read:

210.249 Exemption for subsequent participating manufacturers.—The fee imposed by ss. 210.23-210.249 does not apply to cigarettes of any subsequent participating manufacturer, as defined in the Master Settlement Agreement, which would otherwise be required to pay the fee under ss. 210.23-210.249 until the effective date of a credit amendment to the Master Settlement Agreement, and such cigarettes shall be treated as settling manufacturer cigarettes until such time. For purposes of ss. 210.23-210.249, the term "Master Settlement Agreement" means the settlement agreement entered into on November 23, 1998, by the settling states and the participating manufacturers, as defined in that agreement, as amended to date. For purposes of ss. 210.23-210.249, the term "credit amendment" means an amendment to the Master Settlement Agreement which offers a credit to subsequent participating manufacturers for amounts paid under that agreement with respect to their products in a form agreed upon by:

(1) The settling states, as defined in the Master Settlement Agreement, with aggregate allocable shares, as defined in the Master Settlement Agreement, equal to at least 99.937049 percent;

(2) The original participating manufacturers, as defined in the Master Settlement Agreement; and

(3) The subsequent participating manufacturers who would otherwise be required to pay the fee under ss. 210.23-210.249 whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the 50 states, the District of Columbia, and Puerto Rico, during the calendar year

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at issue, as measured by excise taxes collected by the Federal Government and, in the case of cigarettes sold in Puerto Rico, by “arbitrios de cigarillos” collected by the Puerto Rico taxing authority, is greater than 3.75 percent. For purposes of calculating subsequent participating manufacturer share under ss. 210.23-210.249, 0.09 ounces of “roll your own” tobacco constitutes one individual cigarette.

Section 11. This act shall take effect July 1, 2013.