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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, parents, successors, or affiliates of a  
 8           signatory to a tobacco settlement agreement applicable to  
 9           all such judgments; limiting the total cumulative value of  
 10          all 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  
 19 amended to 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.). As used in this section, the term  
 27 "appellant's proportionate share of liability" means either the  
 28 total liability for a judgment where there is a single defendant

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29 or appellant, and, in cases where there are multiple defendants  
 30 or appellants, any amount specifically allocated against a  
 31 particular defendant or appellant in the judgment, and, where  
 32 liability is not specifically allocated in whole or in part  
 33 among multiple defendants or appellants, the amount of the  
 34 unallocated portion of the judgment divided equally among the  
 35 defendants or appellants.

36 (2) In any civil action involving a signatory, ~~or~~  
 37 successor, parent, or an affiliate of a signatory to a the  
 38 tobacco settlement agreement, ~~as defined in s. 215.56005(1)(f),~~  
 39 the ~~supersedeas appeal~~ bond or other surety to be furnished  
 40 during the pendency of all appeals or discretionary appellate  
 41 reviews, including reviews by the United States Supreme Court,  
 42 of any judgment in such litigation shall be set pursuant to  
 43 applicable laws or court rules, except that the total cumulative  
 44 value of all supersedeas bonds or other surety required to stay  
 45 the execution of the judgment ~~bond for all defendants~~ may not  
 46 exceed \$100 million for all appellants collectively, regardless  
 47 of the total value of the judgment.

48 (3) (a) In civil actions against a signatory, successor,  
 49 parent, or affiliate of a signatory to a tobacco settlement  
 50 agreement brought by or on behalf of persons who claim or have  
 51 been determined to be members of a former class action that was  
 52 decertified in whole or in part, the trial courts shall  
 53 automatically stay the execution of judgments in any such  
 54 actions during the pendency of all appeals or discretionary  
 55 appellate reviews, including reviews by the United States  
 56 Supreme Court, upon provision of security required in this

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57 subsection. Security shall be provided through the posting with  
 58 or payment into the registry of the clerk of the Supreme Court,  
 59 by each appellant individually, of supersedeas bonds, other  
 60 surety or cash in an amount based upon or equal to the  
 61 appellant's proportionate share of liability in all cases  
 62 pending appeal plus twice the statutory rate of interest on  
 63 judgments, provided that an individual appellant shall not be  
 64 required to provide total security for such purposes in excess  
 65 of the greater of either \$5 million, or, \$100 million multiplied  
 66 by the appellant's percentage share of all payments to the state  
 67 of Florida in 2008 under the tobacco settlement agreement.  
 68 Regardless of the total value or number of the judgments, the  
 69 total cumulative value of all security required of all  
 70 appellants to stay the execution of all such judgments under  
 71 this subsection may not exceed \$105 million for all appellants  
 72 collectively.

73  
 74 Upon the provision by any individual appellant of the maximum  
 75 security required by this section the trial courts shall stay  
 76 the execution of judgments in all other cases covered by this  
 77 subsection during the pendency of all appeals or discretionary  
 78 appellate reviews, including reviews by the United States  
 79 Supreme Court, without requiring any additional supersedeas  
 80 bonds or other surety except as may be provided below.

81  
 82 By operation of law, each appellee whose judgment against an  
 83 appellant is stayed by operation of this subsection shall be  
 84 deemed a co-beneficiary of all security provided by that

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85 appellant under this subsection, in the same proportion as the  
 86 appellee's judgment has to the total amount of judgments against  
 87 such appellant that are stayed under this subsection.

88 (b) An appellant that has made payments into the registry  
 89 of the clerk of the Supreme Court pursuant to this subsection  
 90 may petition the circuit court in any case still pending or the  
 91 Supreme Court for an order directing the clerk of the Supreme  
 92 Court to refund any amount so deposited that exceeds the total  
 93 of the appellant's proportionate share of liability of all  
 94 unsatisfied judgments then affected by this subsection. Such  
 95 refund shall be ordered upon a showing that the security  
 96 provided under this subsection by such appellant is no longer  
 97 necessary to pay outstanding judgments against the appellant.  
 98 Prior to acting on such petition, the court petitioned may  
 99 require proof of service of such petition to all affected  
 100 parties. The clerk of the Supreme Court shall make any refund so  
 101 ordered within 60 days of such order.

102 (c) Any security provided by an appellant under this  
 103 subsection is intended to secure the collection of judgments  
 104 against that appellant in cases covered by this subsection. No  
 105 claim may be made against such security unless an appellant does  
 106 not pay a judgment in a case covered by this subsection within  
 107 30 days after the judgment becomes final. For purposes of this  
 108 paragraph, a judgment is final following the completion of all  
 109 appeals or discretionary appellate reviews, including reviews by  
 110 the United States Supreme Court. In the event that an appellant  
 111 does not pay a judgment within such time period, (i) any stay of  
 112 execution required in favor of such appellant under this

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113 subsection shall be immediately lifted by operation of law,  
 114 unless a stay is provided pursuant to some other provision of  
 115 law, rule of court or judicial order; and (ii) any judgment  
 116 creditor against whom a stay of execution of a judgment against  
 117 the appellant was in effect pursuant to this subsection may  
 118 petition the trial court or the Supreme Court for an order  
 119 directing the clerk of the Supreme Court to equitably distribute  
 120 any cash security provided under this subsection by such  
 121 appellant and/or for an order with respect to any bond or other  
 122 surety making equitable division of the proceeds of such bond or  
 123 surety. At any time, the clerk of the Supreme Court may  
 124 interplead any cash security provided by an appellant under this  
 125 subsection in any circuit court in which a case affected by this  
 126 subsection is then pending. Such court shall make equitable  
 127 distribution of such security to appellees whose judgments  
 128 against such appellant are secured by operation of this  
 129 subsection.

130 (d) The clerk of the Supreme Court shall collect fees for  
 131 receipt of deposits under paragraph (a) as authorized by  
 132 sections 28.231 and 28.24(10)(a), Florida Statutes. In  
 133 addition, for as long as any cash remains on deposit with the  
 134 clerk pursuant to this subsection, the clerk of the Supreme  
 135 Court shall be entitled to regularly receive as an additional  
 136 fee, the net investment income earned thereon. The clerk shall  
 137 utilize the services of the Chief Financial Officer, as needed,  
 138 for the custody and management of all bonds, other surety or  
 139 cash posted or deposited with the clerk. All fees collected  
 140 pursuant to this subsection shall be deposited in the State

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141 Courts Revenue Trust Fund for use as specified by law.

142 (e) On or before October 1, 2009, the Department of Revenue  
 143 shall provide to the clerk of the Supreme Court a report showing  
 144 the total tobacco settlement payments received by the state in  
 145 2008 and the percentage of that total received on behalf of each  
 146 settling manufacturer. Upon request of any judicial officer  
 147 administering any case affected by this subsection or of any  
 148 appellant that has provided security under this subsection, the  
 149 clerk of the Supreme Court shall certify to the trial court the  
 150 amount of security provided by a subject appellant and shall  
 151 certify whether such amount equals the maximum amount required  
 152 under subsection (3) (a) determined in reliance upon the report  
 153 of the Department of Revenue. Any trial court may make such  
 154 further inquiry as may be necessary to determine the existence  
 155 of a stay in a particular case. In addition, other evidence of  
 156 the security provided under this subsection through the clerk of  
 157 the Supreme Court shall be provided to the Clerks of the Circuit  
 158 Court in such form as may be directed by the Supreme Court  
 159 acting in its administrative capacity.

160 (4)(2) Notwithstanding subsections (2) and (3) subsection  
 161 (1), if, after notice and hearing, a plaintiff proves by a  
 162 preponderance of the evidence that a defendant who posted a  
 163 supersedeas ~~such~~ bond or other equivalent surety or who made  
 164 cash payments into the registry of the clerk of the Supreme  
 165 Court pursuant to subsection (3) (a) is purposefully dissipating  
 166 assets outside the ordinary course of business to avoid payment  
 167 of the judgment, the court may enter necessary orders as to that  
 168 defendant to protect the plaintiff, including an order that the

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169 | bond or equivalent surety be posted in an amount up to the full  
 170 | amount of the judgment against that defendant.

171 | (5)~~(3)~~ This section does not apply to any past, present,  
 172 | or future action brought by the State of Florida against one or  
 173 | more signatories to the settlement agreement.

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

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