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Cigarette makers to pay

\$710 million given to Florida smokers

By Catherine Wilson
THE ASSOCIATED PRESS

MIAMI — Three cigarette makers who lost a record-setting \$145 billion verdict to sick Florida smokers agreed Monday to pay them \$710 million, no matter how their appeals turn out.

"That amount of money is guaranteed to the class win, lose or draw," said Lorillard general counsel Ronald Milstein. "We've decided this is the surest path to (making) the appeals process unencumbered and unhindered."

The guarantee represents the industry's first major financial commitment directly to smokers in nearly four decades of hotly contested tobacco litigation. The industry agreed in the late 1990s to pay \$248 billion over 25 years to settle state lawsuits.

"Obviously this is a milestone," said longtime industry critic Richard Daynard. "At least for a moment, the industry spin stopped long enough for them to shell out \$700 million."

Philip Morris, Lorillard and Liggett opted for the agreement to keep the sick smokers from challenging the constitutionality of a new state law placing a \$500 million cap on appeal bonds in the case.

Without the law, the companies would have been required to buy bonds worth more than the \$145 billion verdict to be able to get higher court review — an impossibly high requirement, in the industry's view.

"Even if we were to lose ultimately, which I hope and pray would not

happen, the class would be guaranteed \$700 million," said smokers' attorney Stanley Rosenblatt. "This \$700 million plus interest, the class would keep."

Under a 28-page order approved by Miami-Dade Circuit Judge Gerald Hubbard, the three companies agreed to increase their current bond from \$203 million already on deposit with the trial court to \$2 billion, including the nonrefundable \$710 million.

"No money is going to change hands until all appeals are exhausted in this case," said Philip Morris vice president William Ohlemeyer. But he acknowledged one chunk of money won't be returned.

"That was the price we were willing to pay to remove this uncertainty and get this appeal focused on the real issues," he said. "We wanted to eliminate any uncertainty or any distraction that might exist."

Former smoker Frank Amodeo sat through the two-year trial and won a \$5.8 million compensatory damage award from the same jury for his throat cancer. He said he was aware the talks were going on but had little to say other than "I'm very satisfied."

The agreement was the result of 40 to 50 meetings over several months, Rosenblatt said. "Obviously we wouldn't have entered into the agreement unless we thought it was a victory for the class," he said.

R.J. Reynolds and Brown & Williamson have two weeks to decide whether to join. If they do, the amount of the guarantee would increase. If they don't and Rosenblatt

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appeals the bond cap, they take their chances. Both companies were left out of the negotiations and said they learned of the agreement Monday.

Reynolds issued a statement expressing confidence in the constitutionality of the bond cap law.

Brown & Williamson spokesman Mark Smith said his company was evaluating the agreement that was reached by the other companies.

"We were told early on by Philip Morris that Brown & Williamson and Reynolds did not want to join in the negotiations," Rosenblatt said. "We had no direct contact with Brown & Williamson and Reynolds."

Daynard said he expects the other two companies to join the bond agreement and bring the total reserved for smokers to about \$1 billion. He said the alternative would be a bankruptcy risk if the bond law enacted last year during trial were challenged and overturned.

The jury decision on punitive damages last July broke all records for damages in a lawsuit. The industry responded by saying it wasn't an amount any business could pay and confidently predicted an appellate victory.

"It really flies in the face of the expressions of confidence that they have made to date" about appeals, said Martin Feldman, Salomon Smith Barney's tobacco analyst. He was surprised by the agreement and called it "an expensive insurance policy."

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FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

*2000 Regular Session
2000 Special Session “A”*



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HISTORY OF SENATE BILLS

- S 1716 (CONTINUED)**
 05/01/00 SENATE Placed on Special Order Calendar -SJ 00629, Read second time -SJ 00727, Amendment(s) adopted -SJ 00727, Ordered engrossed -SJ 00728
 05/03/00 SENATE Read third time -SJ 00934, CS passed as amended YEAS 37 NAYS 0 -SJ 00934
 05/03/00 HOUSE In Messages
 05/05/00 HOUSE Died in Messages
- S 1718 GENERAL BILL/CS by Health, Aging and Long-Term Care, Campbell (Identical CS/1ST ENG/H 1953, Similar S 2492, Compare CS/1ST ENG/H 1659)**
Telehealth, requires separate licensure to provide telehealth services to patients in this state, provides that telehealth licensure requirements & responsibilities shall be identical to those provided for full licensure in applicable profession, provides exemption from said licensure for registered nonresident pharmacies & their employees, authorizes bringing of telehealth malpractice actions in this state etc Creates 455 5641, amends 766 102 Effective Date 07/01/2000
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced referred to Criminal Justice, Health, Aging and Long-Term Care, Fiscal Policy -SJ 00102
 03/22/00 SENATE On Committee agenda—Criminal Justice, 03/28/00 9 00 am 37-S
 03/28/00 SENATE Comm Action Favorable with 2 amendment(s) by Criminal Justice YEAS 6 NAYS 0 -SJ 00305
 03/29/00 SENATE Now in Health Aging and Long-Term Care -SJ 00305
 04/12/00 SENATE On Committee agenda—Health, Aging and Long-Term Care, 04/17/00, 3 30 pm, 110-S
 04/17/00 SENATE Comm Action CS by Health, Aging and Long-Term Care, YEAS 6 NAYS 0 -SJ 00486 CS read first time on 04/19/00 -SJ 00490
 04/19/00 SENATE Now in Fiscal Policy -SJ 00486
 05/05/00 SENATE Died in Committee on Fiscal Policy
- S 1720 GENERAL BILL/CS/1ST ENG by Governmental Oversight and Productivity, Latvala (Compare CS/2ND ENG/H 1721)**
Class-action Suits/Punitive Damages, prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class action suits, pending appellate review, provides for application of act to certain pending cases Creates 768 733 Effective Date Upon becoming law
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00102
 04/20/00 SENATE On Committee agenda—Governmental Oversight and Productivity 04/25/00, 9 00 am 37-S
 04/25/00 SENATE Comm Action -CS by Governmental Oversight and Productivity, YEAS 7 NAYS 0 -SJ 00522, CS read first time on 04/26/00 -SJ 00524
 04/26/00 SENATE Placed on Calendar -SJ 00522
 04/28/00 SENATE Placed on Special Order Calendar -SJ 00581, Read second time -SJ 00627, Amendment(s) adopted -SJ 00627, Amendment pending -SJ 00627
 05/01/00 SENATE Placed on Special Order Calendar -SJ 00628, Pending amendment adopted -SJ 00630, Amendment(s) adopted -SJ 00630, Ordered engrossed -SJ 00630
 05/02/00 SENATE Read third time -SJ 00811, CS passed as amended, YEAS 37 NAYS 2 -SJ 00812
 05/02/00 HOUSE In Messages
 05/04/00 SENATE Requested House to return -SJ 01087
 05/05/00 HOUSE Died in Messages, Ident/Sim/Compare Bill(s) passed refer to CS/HB 1721 (Ch 2000-128)
- S 1722 GENERAL BILL by Latvala**
Economical Operation/State Govt, expresses legislative intent to revise laws in order to promote economical operation of state government Effective Date Upon becoming law
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced referred to Governmental Oversight and Productivity -SJ 00102
 04/20/00 SENATE On Committee agenda—Governmental Oversight and Productivity 04/25/00, 9 00 am, 37-S—Temporarily postponed
 04/25/00 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/26/00, 3 30 pm, 37-S—Not considered
 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity
- S 1724 GENERAL BILL by Latvala**
Effective State Government, expresses legislative intent to revise laws in order to promote effective state government Effective Date Upon becoming law
 02/25/00 SENATE Prefiled
- S 1724 (CONTINUED)**
 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00102
 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity
- S 1726 GENERAL BILL by Latvala**
Efficient State Government, expresses legislative intent to revise laws in order to promote efficiency in state government Effective Date Upon becoming law
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00102
 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity
- S 1728 GENERAL BILL by Campbell**
Florida Motor Vehicle No-Fault Law, repeals various provisions of Fla Motor Vehicle No-Fault Law re short title, purpose definition, required security proof of security, personal injury protection benefits, tort exemption, personal injury protection optional limitations & deductions, notification of insured's rights, joinder of claims, & insurer's right of reimbursement Repeals 627 730- 7405 Effective Date Upon becoming law
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced referred to Banking and Insurance, Transportation -SJ 00102
 03/08/00 SENATE Withdrawn from Banking and Insurance Transportation -SJ 00135, Withdrawn from further consideration -SJ 00135
- S 1730 GENERAL BILL/CS/CS/1ST ENG by Governmental Oversight and Productivity, Banking and Insurance, Campbell (Similar CS/S 2278, Compare H 0553, CS/CS/CS/2ND ENG/S 1258)**
Deferred Presentments, provides additional grounds for disciplinary action revises deposit of fees & assessments, adds fee for authorized vendor or branch locations, creates part IV of Money Transmitters' Code, provides registration requirements for deferred presentment transactions provides procedures for recovering damages for worthless checks, requires maintenance of records for time certain, etc Amends Ch 560 Appropriation \$150,000 Effective Date 10/01/2000 except as otherwise provided
 02/25/00 SENATE Prefiled
 03/07/00 SENATE Introduced, referred to Banking and Insurance, Agriculture and Consumer Services Governmental Oversight and Productivity -SJ 00103
 03/22/00 SENATE On Committee agenda—Banking and Insurance 03/27/00 1 00 pm 110-S
 03/27/00 SENATE Comm Action CS by Banking and Insurance, YEAS 10 NAYS 1 -SJ 00305, CS read first time on 03/29/00 -SJ 00315
 03/28/00 SENATE Now in Agriculture and Consumer Services -SJ 00305
 03/30/00 SENATE Withdrawn from Agriculture and Consumer Services Governmental Oversight and Productivity -SJ 00321 Rereferred to Governmental Oversight and Productivity, Agriculture and Consumer Services -SJ 00321
 04/07/00 SENATE On Committee agenda—Governmental Oversight and Productivity 04/12/00, 10 00 am, 37-S—Temporarily postponed
 04/12/00 SENATE On Committee agenda—Governmental Oversight and Productivity 04/17/00, 3 30 pm, 37-S
 04/17/00 SENATE Comm Action CS/CS by Governmental Oversight and Productivity, YEAS 5 NAYS 0 -SJ 00485, CS read first time on 04/19/00 -SJ 00490
 04/19/00 SENATE Now in Agriculture and Consumer Services -SJ 00485
 04/26/00 SENATE Withdrawn from Agriculture and Consumer Services -SJ 00497, Placed on Calendar
 05/01/00 SENATE Placed on Special Order Calendar -SJ 00629
 05/02/00 SENATE Placed on Special Order Calendar -SJ 00729, Read second time -SJ 00734, Amendment(s) adopted -SJ 00734, Ordered engrossed -SJ 00736
 05/03/00 SENATE Read third time -SJ 00934, CS passed as amended YEAS 39 NAYS 0 -SJ 00934
 05/03/00 HOUSE In Messages
 05/05/00 HOUSE Died in Messages Ident/Sim/Compare Bill(s) passed refer to CS/CS/CS/SB 1258 (Ch 2000-360)
- S 1732 GENERAL BILL/CS by Banking and Insurance, Campbell (Linked CS/CS/S 1598, Similar CS/H 2003, H 2389, Compare H 0903, CS/H 1433, H 1937, S 1128)**
Public Records/Pawnbrokers, exempts certain records re pawnbroker transactions which are submitted to FDLE from requirements of public records law provides certain exceptions provides for future review & repeal provides funding of public necessity Effective Date Contingent
 02/25/00 SENATE Prefiled

FLORIDA LEGISLATURE—REGULAR SESSION—2000
HISTORY OF HOUSE BILLS

H 1719 (CONTINUED)

04/26/00 HOUSE Withdrawn from Community Affairs (PRC) -HJ 00775, Placed on Calendar
04/28/00 HOUSE Placed on Local Calendar Read second and third times -HJ 01072, Passed, YEAS 112 NAYS 0 -HJ 01072
04/28/00 SENATE In Messages
05/02/00 SENATE Received, referred to Rules and Calendar -SJ 00892
05/04/00 SENATE Withdrawn from Rules and Calendar Placed on Local Calendar -SJ 00994
05/05/00 SENATE Placed on Local Calendar -SJ 01145, Read second and third times -SJ 01379, Passed, YEAS 39 NAYS 0 -SJ 01379
05/05/00 HOUSE Ordered enrolled -HJ 02440
05/26/00 Signed by Officers and presented to Governor
06/07/00 Approved by Governor Chapter No 2000-470

H 1721 GENERAL BILL/CS/2ND ENG by Financial Services (CAC); Lacasa, Fasano, (CO-SPONSORS) Byrd, Maygarden; Crow, Bitner; Rubio, Feeney (Compare CS/1ST ENG/S 1720, CS/CS/1ST ENG/S 1998, 1ST ENG/S 2168)

Tobacco Settlement Proceeds, creates Tobacco Settlement Financing Corp authorizes corporation to enter into certain purchase agreements with Banking & Finance Dept for certain purposes, exempts corporation from taxation provides for additional funding of Lawton Chiles Endowment Fund, prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class-action suits, etc Creates 215 56005, 768 733, amends 17 41 215 5601 Appropriation \$5,100,000 Effective Date 03/09/2000
03/06/00 HOUSE Prefiled
03/07/00 HOUSE Introduced -HJ 00112
03/10/00 HOUSE Referred to Financial Services (CAC) Governmental Rules & Regulations (PRC), Finance & Taxation (FRC) General Appropriations (FRC) -HJ 00284
03/30/00 HOUSE On Committee agenda—Financial Services (CAC) 04/03/00 3 15 pm, 214-C
04/03/00 HOUSE Comm Action CS by Financial Services (CAC), YEAS 10 NAYS 0 -HJ 00539
04/12/00 HOUSE CS read first time on 04/12/00 -HJ 00531, Pending review of CS under Rule 113 -HJ 00539
04/14/00 HOUSE Now in Governmental Rules & Regulations (PRC) -HJ 00539
04/18/00 HOUSE Withdrawn from Governmental Rules & Regulations (PRC) -HJ 00557 Now in Finance & Taxation (FRC)
04/25/00 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/26/00, 5 00 am, Morris Hall—Pending reconsideration
04/26/00 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/26/00, 5 00 pm Morris Hall, Comm Action Favorable with 12 amendments by Finance & Taxation (FRC), YEAS 14 NAYS 2 -HJ 00835, Now in General Appropriations (FRC) -HJ 00835
04/27/00 HOUSE Withdrawn from General Appropriations (FRC) -HJ 00888 Placed on Calendar
04/28/00 HOUSE Placed on Special Order Calendar, Read second time -HJ 01181, Amendment(s) adopted -HJ 01182
05/03/00 HOUSE Read third time -HJ 01471, CS passed as amended YEAS 88 NAYS 29 -HJ 01471
05/03/00 SENATE In Messages, Received, referred to Governmental Oversight and Productivity -SJ 01002 Immediately withdrawn from Governmental Oversight and Productivity -SJ 00987, Substituted for CS/CS/SB 1998 -SJ 00987, Read second time -SJ 00987, Amendment(s) adopted -SJ 00987, Read third time -SJ 00994, CS passed as amended YEAS 39 NAYS 0 -SJ 00994, Conference Committee appointed, Senator Burt, Chair Horne, Rossin, In the event the House refuses to concur -SJ 00994
05/03/00 HOUSE In returning messages
05/04/00 HOUSE Refused to concur -HJ 01533, Conference Committee appointed, Representatives Lacasa, Gay, Gottlieb -HJ 01540
05/05/00 HOUSE Conference Committee Report received -HJ 02226, Conference Committee Report adopted -HJ 02230 Passed as amended by Conference Committee Report, YEAS 115 NAYS 0 -HJ 02230
05/05/00 SENATE In returning messages Conference Committee Report received -SJ 01438 Conference Committee Report adopted -SJ 01442, Passed as amended by Conference Committee Report, YEAS 38 NAYS 0 -SJ 01442, Reconsidered -SJ 01442, Passed as amended by Conference Committee Report YEAS 39 NAYS 0 -SJ 01442
05/05/00 HOUSE Ordered engrossed then enrolled -HJ 02441
05/09/00 Signed by Officers and presented to Governor, Approved by Governor Chapter No 2000 128

H 1723 GENERAL BILL/CS by Judiciary (CJC), Alexander; Bense; (CO-SPONSORS) Edwards (Similar CS/1ST ENG/S 2368)

Traffic Control, requires issuance of copy of Traffic School Reference Guide with traffic citations, deletes reference to restriction on number of elections person may make to attend basic driver improvement course deletes reference to time period & increases amount of damage required re crash for screening of certain crash reports provides for mandatory driver improvement courses for certain violations, etc Amends Chs 318, 322, 316 650 Effective Date 10/01/2000
03/06/00 HOUSE Prefiled
03/07/00 HOUSE Introduced -HJ 00112
03/10/00 HOUSE Referred to Judiciary (CJC), Finance & Taxation (FRC) -HJ 00284
03/27/00 HOUSE On Committee agenda—Judiciary (CJC), 03/29/00, 1 30 pm Reed Hall
03/29/00 HOUSE Comm Action CS by Judiciary (CJC), YEAS 8 NAYS 0 -HJ 00536
04/12/00 HOUSE CS read first time on 04/12/00 -HJ 00531
04/07/00 HOUSE Pending review of CS under Rule 113 -HJ 00536 Now in Finance & Taxation (FRC) -HJ 00536
04/18/00 HOUSE Withdrawn from Finance & Taxation (FRC) -HJ 00557, Placed on calendar, available for General Calendar
04/24/00 HOUSE Placed on General Calendar Read second and third times -HJ 00670, CS passed, YEAS 113 NAYS 0 -HJ 00670
04/24/00 SENATE In Messages
04/26/00 SENATE Received referred to Transportation -SJ 00533
05/05/00 SENATE Withdrawn from Transportation -SJ 01353, Substituted for CS/SB 2368 -SJ 01353, Read second and third times -SJ 01353, CS passed YEAS 35 NAYS 0 -SJ 01353, Reconsidered -SJ 01356, -SJ 01357, Died on Calendar

H 1725 GENERAL BILL/CS by Transportation & Economic Development Appropriations (FRC); Sublette (Similar CS/CS/S 0392, Compare CS/2ND ENG/S 1194)

Debtors & Creditors, provides for phaseout of sheriff's execution docket, clarifies seizure of property for levy, increases time period to re-record lien in order to get lien extended for certain time requires Dept of State to establish database of judgment lien records revises provisions re designation of homestead by owner before levy provides procedures provides for taking of oath before notary public re exemptions from garnishment, etc Amends FS Effective Date 10/01/2000 except as otherwise provided
03/06/00 HOUSE Prefiled
03/07/00 HOUSE Introduced -HJ 00112
03/10/00 HOUSE Referred to Judiciary (CJC) Transportation & Economic Development Appropriations (FRC) -HJ 00284
03/27/00 HOUSE On Committee agenda—Judiciary (CJC), 03/29/00, 1 30 pm Reed Hall—Temporarily deferred
03/31/00 HOUSE On Committee agenda—Judiciary (CJC), 04/04/00 3 30 pm Reed Hall
04/04/00 HOUSE Comm Action Favorable with 1 amendment(s) by Judiciary (CJC), YEAS 9 NAYS 0 -HJ 00503
04/06/00 HOUSE Now in Transportation & Economic Development Appropriations (FRC) -HJ 00503
04/14/00 HOUSE On Committee agenda—Transportation & Economic Development Appropriations (FRC), 04/18/00 1 30 pm, 317 C
04/18/00 HOUSE Comm Action -CS by Transportation & Economic Development Appropriations (FRC) YEAS 10 NAYS 0 -HJ 00771
04/25/00 HOUSE CS read first time on 04/25/00 -HJ 00768, Pending review of CS under Rule 113 -HJ 00771, Placed on calendar, available for General Calendar -HJ 00771
04/27/00 HOUSE Placed on Special Order Calendar, Read second time -HJ 00876
05/02/00 HOUSE Read third time -HJ 01391, CS passed YEAS 115 NAYS 0 -HJ 01391
05/02/00 SENATE In Messages
05/03/00 SENATE Received referred to Judiciary Fiscal Policy -SJ 00995
05/05/00 SENATE Died in Committee on Judiciary, Identical (Compare Bills) passed refer to CS/SB 1194 (Ch 2000-258)

H 1727 GENERAL BILL by Jacobs (Identical S 2230)

Nursing Home Facilities Receivership provides conditions under which AHCA must petition court for appointment of receiver for facility, prescribes term of receivership authorizes agency to adopt rules, provides funds for administering receivership from Resident Protection Trust Fund, removes limitation on term of appointment of receiver Amends 400 126 Effective Date 07/01/2000
03/06/00 HOUSE Prefiled
03/07/00 HOUSE Introduced -HJ 00112

(CONTINUED ON NEXT PAGE)



Advisory Legal Opinion

Number: AGO 2000-21

Date: March 27, 2000

Subject: Courts, assessment of punitive damages

The Honorable Toni Jennings
President, The Florida Senate
Room 418, Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable John E. Thrasher
President, Florida House of Representatives
Room 420, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

RE: COURTS--DAMAGES--Assessment of punitive damages prior to
compensatory damages.

Dear Madam President and Mr. Speaker:

You have asked substantially the following question:

Does Florida law require that compensatory damages be determined
before punitive damages may be awarded?

In sum:

Florida's common law requires that an award of compensatory
damages is a prerequisite to an award of punitive damages where
actual damage is an essential element of the underlying tort.

A number of Members and senior staff of both the House of
Representatives and the Senate have contacted this office and
asked my advice about the posture of the protracted *Engle* class
action litigation. [1] Based on your request and pursuant to
section 16.01(3), Florida Statutes, it is appropriate in my role
as the chief legal officer of this State that I apprise each of
you, in your role as Speaker of the Florida House of
Representatives and President of the Florida Senate, regarding

the legal considerations relevant to the matters of concern which have been presented.

In 1994, this multiple count suit was filed in the Dade County Circuit Court against major tobacco companies. Several procedural controversies ensued with attendant intervening interlocutory appeals, the assignment of a new trial court judge, and a jury determination of liability without a damages determination. Additional procedural controversies followed with intervening interlocutory appeals.[2] The current trial court judge eventually adopted a trial plan whereby the jury would determine "lump-sum" punitive damages prior to determining compensatory damages for each individual class member.

Florida law is clear that compensatory damages must be determined prior to any award of punitive damages in cases of this nature. In *Ault v. Lohr*, [3] the Supreme Court of Florida stated: "The law is well settled that punitive damages require an underlying award of compensatory damages." Chief Justice Ehrlich stated in a specially concurring opinion that where actual harm is an element of the tort, "an award of compensatory damages must be a prerequisite to an award of punitive damages." [4]

The Supreme Court of Florida in *W.R. Grace & Company v. Waters* [5] reaffirmed that liability and compensatory damages must be assessed before punitive damages:

We hold that henceforth trial courts, when presented with a timely motion, should bifurcate the determination of the amount of punitive damages from the remaining issues at trial. At the first stage of a trial in which punitive damages are an issue, the jury should hear evidence regarding liability for actual damages, the amount of actual damages, and liability for punitive damages, and should make determinations on those issues. If, at the first stage, the jury determines that punitive damages are warranted, the same jury should then hear evidence relevant to the amount of punitive damages and should determine the amount for which the defendant is liable.

Most recently, the Florida Supreme Court in *Owens-Corning Fiberglass Corporation v. Ballard* [6] held that in assessing punitive damages, a jury must consider "the harm that actually has occurred."

The concept that compensatory damages must be determined before punitive damages are awarded is not unique to Florida. For example, in *Allison v. Citgo Petroleum Corporation*, [7] the Fifth Circuit held that "punitive damages must be determined after proof of liability to individual plaintiffs . . . not upon the

mere finding of general liability to the class."

This requirement that compensatory damages must be determined before punitive damages is based on constitutional concerns of due process. As the United States Supreme Court has made clear, the due process clause of the Fourteenth Amendment prohibits the state from imposing a grossly excessive punishment on a tortfeasor.[8]

In determining whether an award is excessive, the courts have examined the ratio between compensatory damages and punitive damages. While not the sole factor to be considered, this relationship is, nevertheless, a critical element in determining whether the due process clause is implicated.[9]

The courts have recognized that there is no fixed ratio between compensatory and punitive damages that is to be uniformly applied in every case. For example, in *TXO Production Corporation*, [10] the United States Supreme Court stated:

"We need not, and indeed cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concern of reasonableness . . . properly enter[s] into the constitutional calculus."

Thus, the common law clearly requires that the amount of punitive damages must bear a reasonable relationship to compensatory damages. As the Fifth Circuit Court of Appeal explained in *Allison v. Citgo Petroleum Corporation*, *supra*,

"[B]ecause punitive damages must be reasonably related to the reprehensibility of the defendant's conduct and to the compensatory damages awarded to the plaintiffs, [citations omitted] recovery of punitive damages must necessarily turn on the recovery of compensatory damages."

Thus, punitive damages must be determined after proof of liability to individual plaintiffs at the second stage of a pattern or practice case, not upon the mere finding of general liability to the class at the first stage. Moreover, being dependent on non-incidental compensatory damages, punitive damages are also non-incidental--requiring proof of how [damage] was inflicted on each plaintiff introducing new and substantial legal and factual issues, and not being capable of computation by reference to objective standards.[11]

In the absence of any determination of the extent of compensatory damages, the court lacks a standard by which it can judge whether an assessment of punitive damages is reasonable or

is "grossly excessive."

The Supreme Court of Florida has recognized the danger of unlimited discretion in awarding punitive damages. In *W.R. Grace & Company--CONN v. Waters*, [12] the Court stated that unlimited jury discretion or unlimited judicial discretion in fixing punitive damages may invite extreme results that "jar one's constitutional sensibilities."

The recognition that compensatory damages must be determined before punitive damages are assessed is also reflected by the statutes addressing punitive damages. Section 768.73, Florida Statutes, contemplates that punitive damages will generally be a ratio to compensatory damages.

In the event the Legislature should determine that legislation seeking to codify the common law regarding the imposition of compensatory and punitive damages is needed, I am attaching a copy of proposed legislation addressing this issue. [13] The proposed bill would make clear that it applies to all pending actions. [14]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/hrd

[1] *R.J. Reynolds Tobacco Company v. Engle*, No. 94-08273 CA (Fla. 11th Jud. Cir.).

[2] See, *R.J. Reynolds Tobacco Company v. Engle*, 672 So. 2d 39 (Fla. 3d DCA 1996), rev. den., 682 So. 2d 1100 (Fla. 1996); *R. J. Reynolds Tobacco Co. v. Engle*, 711 So. 2d 553 (Fla. 3d DCA 1998); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 689284, 24 Fla. L. Weekly D2061 (Fla. 3d DCA, September 3, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 743 So. 2d 524 (Fla. 3d DCA, September 17, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 767273, 24 Fla. L. Weekly 2193 (Fla. 3d DCA September 17, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 930784, 24 Fla. L. Weekly D2392 (Fla. 3d DCA, October 20, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 961394 (Fla. 3d DCA, October 22, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 2000 WL 204472 (Fla. 3d DCA, February 24, 2000).

[3] 538 So. 2d 454, 455 (Fla. 1989), quoting *Sonson v. Nelson*,

357 So. 2d 747 (Fla. 3d DCA 1978), cert. den., 364 So. 2d 889 (Fla. 1978), cert. den., 364 So. 2d 891 (Fla. 1978).

[4] 538 So. 2d at 457.

[5] 638 So. 2d 502, 506 (Fla. 1994).

[6] No. 92,963, 1999 W.L. 669026 (Fla. 1999).

[7] 151 F.3d 402, 417-418 (5th Cir. 1998).

[8] See, e.g., *TXO Production Corporation v. Alliance Resources Corporation*, 509 U.S. 443, 454, 113 S.Ct. 2711, 2718 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 1592 (1996).

[9] See, *BMW of North America, Inc. v. Gore*, supra, setting forth a three-pronged test which includes, as the second element, the ratio between the harm or potential harm suffered by a plaintiff and the punitive damages awarded.

[10] *TXO Production Corporation v. Alliance Resources Corporation*, 113 S.Ct. at 2720, quoting, *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043 (1991).

[11] 151 F.3d at 417-418.

[12] 638 So. 2d 502, 505 (Fla. 1994), citing *Haslip*, supra.

[13] The proposed legislation creates a new statute, s. 768.726, Fla. Stat., which would provide:

"(1) No punitive damages may be awarded in any civil action, including a class action, unless the compensatory damages stage of trial has been completed as to all plaintiffs covered thereby or in the action, whether named parties or represented class members, prior to the determination of punitive damages, except in cases where actual damages are not an element of the underlying cause of action. Any punitive damage determination rendered or judgment entered contrary to the provisions of this subsection is null and void.

(2) This section shall apply to all cases and causes of action, regardless of the date of filing, pending on or after the effective date of this act."

[14] See, *State ex rel. Szabo Food Serv., Inc. of North Carolina v. Dickinson*, 286 So. 2d 529, 531 (Fla. 1973); *In re Cleary Brothers Construction Co., Inc.*, 9 B.R. 40, 30 UCC Rep.Serv.

1444 (Bankr. S.D. Fla., October 23, 1980) (where amendment is merely declarative of existing law, it should be given a retroactive effect).

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1720

SPONSOR: Governmental Oversight and Productivity Committee and Senator Latvala

SUBJECT: Punitive Damages

DATE: April 25, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute codifies current case law which states that punitive damages, while meant to punish a defendant, should not financially destroy or bankrupt a defendant. The bill provides that in any civil action that is brought as a certified class action, the court may not enter a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt the defendant. Further, the committee substitute requires the trial court, in any civil action that is brought as a certified class action, to stay the execution of any judgment, or portion thereof, on account of punitive-damages pending completion of any state appellate review of the judgment if a bond or equivalent surety is posted as provided. The committee substitute provides that the bond must be the lowest of the following: (a) the amount of the punitive damages plus twice the statutory rate of interest (currently 10 percent), (b) \$100 million; or (c) ten percent of the defendant's net worth. If the court finds that the defendant is moving assets to avoid the punitive-damages judgment, the court must increase the bond to the amount of the damages plus twice the statutory rate of interest. The committee substitute also applies these provisions to all cases pending on the effective date of the act in which the award for punitive damages have not been reduced to judgment and to all cases commenced on or after the effective date.

This committee substitute creates s. 768.733, Florida Statutes.

II. Present Situation:

Part II of ch. 768, F.S.,¹ applies to any action for damages, whether in tort or in contract. If a provision of the part is in conflict with any other provision of the *Florida Statutes*, the other provision applies.

¹Sections 768 71-768 81, F S

Section 768.72, F.S., provides that in any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure are to be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth can proceed until after the pleading concerning punitive damages is permitted.

Under s. 768.72(2), F.S., a defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct² or gross negligence.³

In the case of an employer, principal, corporation, or other legal entity, s. 768.72(3), F.S., permit imposition of punitive damages for the conduct of an employee or agency only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct,
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or
- The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant

In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The “greater weight of the evidence” burden of proof applies to a determination of the amount of damages.

The statutes currently limit the amount of punitive damages, while also providing exceptions to the limitation. Under s. 768.73, F.S., an award of punitive damages may not exceed the greater of: (a) Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of the section; or (b) the sum of \$500,000

Where the fact find determines that the wrongful conduct proven under the section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agency, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of: (a) four times the amount of compensatory damages awarded to each claimant

²The term “intentional misconduct” is defined to mean that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage

³The term “gross negligence” is defined to mean that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct

entitled thereto, consistent with the remaining provisions of the section, or (b) the sum of \$2 million.

III. Effect of Proposed Changes:

The committee substitute provides that in any civil action that is brought as a certified class action, the court may not enter a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt the defendant.

Further, the committee substitute provides that 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 the section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive-damages pending completion of any state appellate review of the judgment.

The committee substitute establishes the required bond or equivalent surety acceptable to the court for imposition of the state to be the lowest of:

- The amount of the punitive-damages judgment, plus twice the statutory rate of interest;
- \$100 million, regardless of the amount of punitive damages; or
- Ten percent of the net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages.

If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety pursuant to paragraph (3)(b) or paragraph (3)(c) is purposefully moving assets with the intent to avoid the punitive-damages judgment, the court must increase the bond or equivalent surety to the amount determined pursuant to paragraph (3)(a), which is the amount of the punitive-damages judgment, plus twice the statutory rate of interest. If the defendant does not post the additional bond required by the court, the stay is required to be revoked.

The act specifically applies to all cases pending on the effective date of the act in which an award for punitive damages has not been finally reduced to judgment through trial and subsequent appeals and to all cases commenced on or after the effective date of the act.

The committee substitute is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

While the constitutional authority to create substantive law lies with the legislative branch, the constitutional authority to promulgate court rules of practice and procedure lies with the judicial branch.⁴ The Legislature, however, can repeal an existing court rule of practice or procedure by a 2/3 vote but it can not enact law that amends or supersedes existing court rule. Generally, substantive law prescribes duties and rights.⁵ Procedural law prescribes the means and methods by which a party seeks redress and enforcement of substantive law.⁶ What constitutes practice and procedure versus substantive law has been decided on a case-by-case basis.

The Florida Supreme Court tends to find statutory provisions unconstitutional when delving into procedural law relating to matters such as the timing and sequence of court procedures, the creation of expedited proceedings, court mandates to perform certain functions, attempts to supersede or modify existing court rules or intrusion into the areas of court practice and procedure.⁷ Nonetheless, the courts have shown some willingness to adopt legislatively enacted "procedural" provisions as a court rule, particularly when the court finds the legislative intent or underlying public policy to be beneficial to the judicial system.⁸

In addition, the Court has expressly deferred within a rule to the expertise of the Legislature in implementing several of its rules.⁹ As stated by the Court, although the "[s]eparation of powers is a potent doctrine that is central to our constitutional form of state government . . . this does not mean . . . that two branches of state government in Florida cannot work hand-in-hand in promoting the public good or implementing the public will, as evidenced by

⁴See art. V, s 2(a), Fla Const. (1978)

⁵See *TGI Friday's Inc. v. Dvorak*, 663 So 2d 606 (Fla. 1995)

⁶*Id*

⁷See e.g., *TGI Friday's Inc. v. Dvorak*, 663 So.2d 606 (Fla. 1995)(relating to offer of judgment statutes in conflict with court rule of procedure on offer of judgment); *Haven Federal Savings & Loan Assoc.* 579 So.2d 730 (Fla. 1991)(statute severing counterclaims into separate trials violated court rules), *Markert v. Johnston*, 367 So 2d 1003 (Fla. 1978)(statute prohibiting joinder of liability insurers as defendants invaded court rule-making authority)

⁸See Fla. R. Jud. Admin. 2.130(a)(authority to adopt substance of invalid section as an emergency rule of procedure)

⁹See e.g., *Kalway v. Singletary*, 708 So 2d 267 (Fla. 1998)(timing for filing complaint seeking extraordinary relief under Florida Rules of Civil Procedure to be determined by law)

our recent decision in *Amendments to the Florida Rules of Appellate Procedure*, 685 So 2d 773 (Fla. 1996) . . .”¹⁰

Substantive Law: Punitive Damages - Based on criteria that substantive law prescribes duties and rights, the courts have found that the provision awarding punitive damages in s. 768.73(1)(a), F.S., relates to substantive law rather than procedural law.¹¹ Therefore, a plaintiff’s right to punitive damages is subject to the discretionary authority of the Legislature to establish or eliminate such right. Further, the right to punitive damages is not a property right which accrues with the cause of action such as the right to compensatory damages and until a judgment is entered awarding punitive damages, the plaintiff does not have a vested right to claim punitive damages.¹²

Bond: Court Rule and Legislative Deference - Based on the general principle that procedural law prescribes the means and methods to apply and enforce substantive rights, the Court has held that the granting of a stay of execution of an order is a step in the enforcement of a final judgment which falls within the definition of procedural law.¹³ However, as an example of the court’s occasional deference to the Legislature as pertains to procedural law, the current Rule 9.310(a), Fla. R. App. P, relating to stays pending review, is markedly different from its precursor, former Rule 5.12(1). Rule 9.310(a), defers in part to the Legislature by stating that

“. . . [e]xcept as provided by general law and in section (b) of this rule, a party seeking to stay a final . . . order pending review shall file a motion in the lower tribunal . . .” (*emphasis added*).

A number of current statutes contain provisions for stays in special situations, including but not limited to:

- Section 733.706, F.S., relating to executions and levies in the administration of estates under the Probate Code.¹⁴

¹⁰*Kalway* at 269. (Citing to the deference shown in recently amended appellate rules in limited matters relating to the constitutional right to an appeal). By the same token, the Legislature has deferred or delegated authority to the judiciary to adopt procedural rules for administrative or quasi-judicial tribunals. See e.g., *In re Workmen’s Compensation Rules of Procedure*, 343 So 2d 1273 (Fla 1977)

¹¹See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So 2d 1352 (Fla 1994)

¹²See *Gordon v State*, 608 So 2d 800 (Fla 1992)

¹³See *Wait v Florida Power & Light Co.*, 372 So 2d 420, (Fla. 1979)(former Rule 5.12(1), Fla. R. App. P, relating to stays pending review, overrode statutory provision relating to stays). The former Rule 5.12(1), Fla. R. App. P, relating to stays pending review, automatically stayed the enforcement of a judgment upon a public agency’s filing of a notice of appeal. Under the statute, the filing of a notice of appeal by a public agency did not automatically stay the enforcement of the judgment

¹⁴Section 733.706, F.S., provides, in pertinent part, that “...no execution or other process shall issue on or be levied against property of the estate.” In construing an earlier version of s. 733.706, F.S., an appellate court reversed a trial court’s order requiring an estate’s personal representative to post a money bond while the personal representative pursued an appeal. See also *Donner v. Donner*, 276 So 2d 516 (Fla 3rd DCA 1973)(an order approving execution or other process to be levied against property of the estate may be entered only in the estate administration proceeding)

- Section 766.311, F.S., relating to review of administrative orders issued in Birth-Related Neurological Injury Compensation Plan proceedings.¹⁵
- Section 766.212, F.S., relating to an arbitration award in a medical malpractice action.¹⁶

The proposed statutory bond provisions are procedural in nature and could be construed as an unconstitutional intrusion on the court's jurisdiction. However, the Court has expressly deferred to the expertise of the Legislature in Rule 9.310, Fla. R. App. P. Thus, the rule allows the Legislature to enact these procedural provisions.

Prospective and Retrospective Effect of a Change in Statutory Law - The distinction between substantive and procedural law is also important for a determination regarding the effect of a statutory change. If a statute is substantive, then the statute is presumed to apply prospectively unless the Legislature expresses its clear intent to have the statute operate retrospectively.¹⁷ The rationale is that retrospective operation of law can act to impair or destroy an existing right. Consequently, any changes to the right to punitive damages under s 768.73, F.S., relating to the limitation on punitive damages, would apply prospectively unless the Legislature specifically provides that the statute has retroactive application.¹⁸ On the other hand, procedural or remedial statutes, would apply retrospectively and apply to pending cases.¹⁹ Accordingly, any statutory change to the bond requirements in accordance with Rule 9.310, Fla. R. App. P, would apply to all pending cases where an award has not been reduced to judgment.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By prohibiting entry of a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt a defendant, the bill would be financially beneficial to defendants who might have punitive damages judgments entered

¹⁵Specifically, subsection (2) of s 766.311, F.S., provides that "[i]n case of an appeal from an award of the administrative law judge, the appeal shall operate as a suspension of the award, and the association shall not be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined."

¹⁶Section 766.212, F.S., allows an appellate court to stay an arbitration award "to prevent manifest injustice. See *St. Mary's Hosp., Inc. v. Phillips*, 699 So 2d 1017 (Fla. 4th DCA 1997) (statute authorizing stay of arbitration award to prevent manifest injustice did not infringe on court's exclusive authority to prescribe court rules)

¹⁷See *State v. Lavazzoli*, 434 So 2d 321 (Fla 1983).

¹⁸See *Thayer v. State*, 335 So 2d 815 (Fla 1976).

¹⁹See *City of Lakeland v. Catinella*, 129 So 2d 133 (Fla 1961)

against them. On the other hand, it could detrimentally affect plaintiffs who might receive reduced amounts of punitive damages.

C. Government Sector Impact:

Indeterminate The bill could protect amounts payable to the State of Florida under the settlement agreement on August 25, 1997, with Phillip Morris, Reynolds Tobacco, B & W American Brands, and Lorillard, as amended.²⁰

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate

²⁰Florida negotiated a "Most Favored Nations" clause in the settlement which provided the state with additional monies for a period of time after Minnesota settled with the defendants on terms more favorable than Florida's

GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
SIXTEENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968

During the Special Session
January 5, 2000, through
January 7, 2000
and
the Regular Session
March 7, 2000, through May 5, 2000



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Under Direction of the
OFFICE OF LEGISLATIVE SERVICES
Tallahassee
2000

CHAPTER 2000-128

Committee Substitute for House Bill No. 1721

An act relating to tobacco; creating s. 215.56005, F.S.; providing definitions; creating the Tobacco Settlement Financing Corporation; providing purposes, providing for a governing board of directors, providing for membership; providing powers of the corporation; authorizing the corporation to enter into certain purchase agreements with the Department of Banking and Finance for certain purposes; authorizing the corporation to issue bonds for certain purposes; providing requirements, limitations, and procedures for issuing such bonds; providing application, providing limitations; limiting liability of the corporation; exempting the corporation from taxation, providing for continued existence of the corporation; authorizing the Auditor General to conduct financial audits of the corporation; providing severability; specifying powers of the Department of Banking and Finance, amending s. 17.41, F.S.; revising provisions relating to deposit into and disbursement of moneys from the Tobacco Settlement Clearing Trust Fund, authorizing sale of the state's right, title, and interest in the tobacco settlement agreement to the corporation, providing for payment of certain moneys into the Tobacco Settlement Clearing Trust Fund; providing for deposit of net proceeds of the sale of the tobacco settlement agreement into the Lawton Chiles Endowment Fund, amending s. 215.5601, F.S., providing for additional funding of the Lawton Chiles Endowment Fund; revising provisions relating to transfer of endowment moneys; clarifying administration of the endowment; providing for receipt by the endowment of minimum amounts in certain fiscal years; creating s. 768.733, F.S.; prescribing the amount of bond or equivalent surety required to stay the execution of punitive-damages judgments in class-action suits, pending appellate review, providing for application of the act to certain pending cases; providing for a Task Force on Tobacco Settlement-Revenue Protection, providing for membership and duties, including reports to the Legislature; providing for staff; providing for expiration of the task force; providing funds to purchase stranded tobacco farming equipment; providing for resale of purchased equipment with restrictions; providing for use of proceeds from resale of equipment, providing appropriations; providing an effective date

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

Section 1. Section 215.56005, Florida Statutes, is created to read:

215.56005 Tobacco Settlement Financing Corporation.—

(1) DEFINITIONS.—As used in this section.

(a) “Bond” means any bond, debenture, note, certificate, or other obligation of financial indebtedness issued by the corporation under this section.

mittees of each chamber, and the Revenue Estimating Conference ~~Thereaf-
ter, the board shall make a status report to such persons no later than
August 15 and February 15 of each year.~~

(e) Accountability for funds from the endowment which have been appro-
priated to a state agency ~~and distributed by the board~~ shall reside with the
state agency. The board is not responsible for the proper expenditure or
accountability of funds from the endowment after ~~transfer distribution~~
to the Tobacco Settlement Clearing Trust Fund ~~a state agency.~~

(7) ~~ENDOWMENT PRINCIPAL; APPROPRIATION OF EARNINGS.—~~
~~The endowment shall receive moneys from the sale of the state's right, title,
and interest in and to the tobacco settlement agreement and from following
amounts are appropriated transferred from the Department of Banking and
Finance Tobacco Settlement Clearing Trust Fund. Amounts to be trans-
ferred from the clearing trust fund shall be in the following amounts for the
following fiscal years to the Lawton Chiles Endowment Fund for Health and
Human Services.~~

- (a) For fiscal year 1999-2000, \$1.1 billion,
- (b) For fiscal year 2000-2001, \$200 million;
- (c) For fiscal year 2001-2002, \$200 million; and
- (d) For fiscal year 2002-2003, \$200 million.

~~Amounts to be transferred pursuant to paragraphs (b), (c), and (d) shall be
reduced by an amount equal to the lesser of \$200 million or the amount the
endowment receives in that fiscal year pursuant to the sale of the state's
right, title, and interest in and to the tobacco settlement agreement.~~

Section 4. Section 768 733, Florida Statutes, is created to read:

768 733 Bonds in class actions; limitations.—

(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 statu-
tory rate of interest; or

(b) Ten percent of the net worth of the defendant as determined by
applying generally accepted accounting principles to the defendant's finan-
cial status as of December 31 of the year prior to the judgment for punitive
damages;

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.

(3) If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety pursuant to subsection (2) is purposefully moving assets with the intent to avoid the punitive-damages judgment, the court shall increase the bond or equivalent surety to the amount determined pursuant to paragraph (2)(a). If the defendant does not post the additional bond required by the court, the stay shall be revoked

Section 5 (1) The Task Force on Tobacco-Settlement-Revenue Protection is created to determine the need for and evaluate methods for protecting the state's tobacco settlement revenue from significant loss. The task force shall, at a minimum, study and make a determination of:

(a) The degree of risk posed to the amount of tobacco-settlement revenue as a consequence of a decline in domestic tobacco sales and increased sale of foreign or nonsettling manufacturers' products.

(b) The degree of risk posed to the tobacco-settlement revenue by potential dissolution or restructure of the tobacco companies that were defendants in the state's suit

(c) The necessity and advisability of taking action to protect the asset value of the tobacco settlement

(d) The options available for protecting the noneconomic and economic benefits and asset value of tobacco-settlement revenues, including, but not limited to, securitization, insurance, self-insurance, model statute, licensing of manufacturers, or a combination of these or other options.

(e) The impact on tobacco use of changes in the noneconomic benefits of the tobacco-settlement agreements, adoption of the model statute, or agreement

(2) The task force shall submit an initial report to the President of the Senate and the Speaker of the House of Representatives by November 1, 2000. The report shall include findings and results of the task force's studies and determinations and any specific recommendations, including recommendations for legislative revisions to address the issues and meet the needs identified under paragraphs (1)(a)-(e). The task force shall then submit a final report to the President of the Senate and the Speaker of the House of Representatives which shall address the final recommendations of the task force and include specific language for recommended legislative changes. The task force shall continue to serve for the purpose of providing assistance to the Legislature as needed to review legislative efforts to implement any of the task force's recommendations.

(3) The task force is to be composed of:

(a) The Governor, who shall serve as chair of the task force,

(b) The Comptroller,

(3) The Department of Agriculture and Consumer Services may use proceeds from the resale of equipment purchased under this section to continue purchasing equipment and to assist tobacco producers to seek out, experiment with, and develop diverse profitable enterprises and retain ownership of their land so that their farms can remain productive agricultural entities and provide ancillary environmental benefits.

Section 8. The nonrecurring sum of \$2.5 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Institute of Food and Agricultural Sciences of the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco litigation.

Section 9. This act shall take effect upon becoming a law.

Approved by the Governor May 9, 2000.

Filed in Office Secretary of State May 9, 2000

CHAPTER 2000-129

Committee Substitute for Committee Substitute for House Bill No. 221

An act relating to Everglades restoration and funding, amending s. 215.22, F.S.; providing that the Save Our Everglades Trust Fund is exempt from certain service charges; amending s. 259.101, F.S.; revising redistribution criteria for unencumbered balances from the Florida Preservation 2000 program, deleting requirements for review and repeal; deleting provision for carryforward of unspent funds; deleting a repealer; amending s. 259.105, F.S.; providing for transfer of funds from the Florida Forever Trust Fund into the Save Our Everglades Trust Fund, amending ss. 259.1051 and 375.045, F.S.; excluding Save Our Everglades Trust Fund distributions from requirement for expenditure within 90 days after transfer; creating s. 373.470, F.S.; creating the "Everglades Restoration Investment Act"; providing definitions, providing legislative intent; providing for a planning process; providing for project implementation reports; providing for the deposit of specified funds into the Save Our Everglades Trust Fund, providing supplemental funds, providing for distributions from the Save Our Everglades Trust Fund; providing credit for acquisitions and work performed; requiring matching funds or credits, providing for an accounting of expenditures; providing for annual progress reports; providing redistribution of funds; providing an appropriation; providing an effective date.

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

prescribing the amount of bond or equivalent surety required to stay the execution of punitive-damages judgments in class-action suits, pending appellate review, providing for application of the act to certain pending cases, providing for a Task Force on Tobacco-Settlement-Revenue Protection, providing for membership and duties, including reports to the Legislature, providing for staff; providing for expiration of the task force; providing funds to purchase stranded tobacco farming equipment, providing for resale of purchased equipment with restrictions, providing for use of proceeds from resale of equipment, providing appropriations; providing an effective date.

The Conference Committee Report was read and on motion by Senator Burt was adopted. CS for HB 1721 passed as recommended. The vote on passage was.

Yeas—38

Bronson	Diaz-Balart	Kirkpatrick	Rossin
Brown-Waite	Dyer	Klein	Saunders
Burt	Forman	Kurth	Scott
Campbell	Geller	Latvala	Sebesta
Carlton	Grant	Laurent	Silver
Casas	Hargrett	Lee	Sullivan
Childers	Holzendorf	McKay	Thomas
Cowin	Horne	Meek	Webster
Dawson	Jones	Mitchell	
Diaz de la Portilla	King	Myers	

Nays—None

RECONSIDERATION OF CONFERENCE COMMITTEE REPORT

On motion by Senator Burt, the Senate reconsidered the vote by which the Conference Committee Report for CS for HB 1721 was adopted.

On motion by Senator Burt, the rules were waived and the Conference Committee Report was adopted. CS for HB 1721 passed as recommended and the action of the Senate was certified to the House. The vote on passage was:

Yeas—39

Madam President	Diaz de la Portilla	King	Myers
Bronson	Diaz-Balart	Kirkpatrick	Rossin
Brown-Waite	Dyer	Klein	Saunders
Burt	Forman	Kurth	Scott
Campbell	Geller	Latvala	Sebesta
Carlton	Grant	Laurent	Silver
Casas	Hargrett	Lee	Sullivan
Childers	Holzendorf	McKay	Thomas
Cowin	Horne	Meek	Webster
Dawson	Jones	Mitchell	

Nays—None

STATEMENT OF INTENT

With respect to Section 4 of the bill that deals with the supersedeas bond I want to confirm.

1. That this language is the content of SB 1720, which the Senate passed, as it relates to supersedeas bonds:
- 2 That to the extent they apply, the whereas clauses of SB 1720, which were not included in the conference report, explain the intent of the Legislature in passing this section and
- 3 That this provision is intended to apply to the current Engle case.

These bond provisions are limited to certified class action suits and would apply these provisions to all cases pending on the effective date of this act in which the award for punitive damages has not been reduced to judgment

Tom Rossin, 35th District

THE PRESIDENT PRESIDING

SENATOR SILVER PRESIDING

COMMUNICATION

The Honorable John Thrasher
Speaker of the House
House of Representatives

May 2, 2000

Dear Mr Speaker.

In compliance with Article III, Section 19(d) of the Constitution and Joint Rule 2, copies of the Conference Committee Reports on HB 2145 and HB 2147 relating to appropriations have been furnished to each member of the Legislature, the Governor, each member of the Cabinet, and the Supreme Court

Delivery was completed May 2, 2000 at 10:05 a m.

Respectfully submitted,
John B Phelps, Clerk

The Honorable Toni Jennings, President

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed HB 2145, as amended by the Conference Committee Report.

John B. Phelps, Clerk

CONFERENCE COMMITTEE REPORT ON HB 2145

The Honorable Toni Jennings
President of the Senate

May 2, 2000

The Honorable John Thrasher
Speaker, House of Representatives

Dear President Jennings and Speaker Thrasher.

Your Conference Committee on the disagreeing votes of the two houses on the Senate Amendments to HB 2145, same being;

An act making appropriations; providing moneys for the annual period beginning July 1, 2000, and ending June 30, 2001, to pay salaries, and other expenses, capital outlay - buildings, and other improvements, and for other specified purposes of the various agencies of State government, providing an effective date

Having met, and after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

1. That the Senate recede from its Amendment 1
2. That the Senate and the House of Representatives adopt the Conference Committee amendments attached hereto, and by reference made a part of this report.

- | | |
|---------------------------------------|---|
| s/Kenneth P. "Ken" Pruitt
Chairman | s/Lesley "Les" Miller, Jr.
Vice Chairman |
| s/Randy Ball | s/Allan Bense |
| s/Rudolph "Rudy" Bradley | s/Johnnie Byrd |
| s/Robert K. "Bob" Casey | s/Cynthia Chestnut |
| s/Lee Constantine | s/George Crady |
| s/Victor Crist | s/Larry Crow |
| s/Paula Dockery | s/Josephus Eggelletion |
| s/Frank Farkas | s/Tom Feeney |
| s/James B. "Jim" Fuller | s/Rodolfo (Rudy) Garcia |
| s/Lars A. Hafner | s/Dennis Jones |
| s/Bruce Kyle | s/Carlos A. Lacasa |
| s/Alfred J "Al" Lawson, Jr | s/Willie F Logan |
| s/Evelyn Lynn | s/Jerry G Melvin |
| s/Jerry Maygarden | s/Jefferson B "Jeff" Miller |
| s/O.R "Rick" Minton, Jr | s/Sandra L "Sandy" Murman |
| s/Durrell Peaden, Jr | s/Alzo J Reddick, Sr |
| s/Beryl Roberts | s/Debby Sanderson |
| s/Charles W "Charlie" Sembler II | s/Kelley R Smith |
| s/Marjorie R Turnbull | s/J Alex Villalobos |
| s/Debbie Wasserman-Schultz | s/Stephen R Wise |

Managers on the part of the of the House of Representatives

- | | |
|--------------------------|---------------------------------------|
| s/Locke Butt
Chairman | s/Daniel Webster
s/Charlie Bronson |
|--------------------------|---------------------------------------|

STORAGE NAME: h1721s1z.fs
DATE: July 13, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-128, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL ANALYSIS**

BILL #: CS/HB 1721
RELATING TO: Tobacco settlement proceeds
SPONSOR(S): Committee on Financial Services and Representative Lacasa
TIED BILL(S):
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 10 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS (W/D)
- (3) FINANCE & TAXATION YEAS 14 NAYS 2
- (4) GENERAL APPROPRIATIONS (W/D)

I. SUMMARY:

CS/HB 1721 was the number assigned to the comprehensive approach developed by the Legislative Conference Committee appointed to resolve the differences in the House and Senate versions of bills relating to the protection of the tobacco settlement proceeds and the disposition of the resulting funds. Please see Part VI of this analysis for a chronicle of CS/HB 1721 and related Senate bills. Also, please see Part V for related comments.

This bill creates the Tobacco Settlement Finance Corporation, a non-profit, public-benefits corporation, for the purpose of purchasing the state's rights, interest and title to future tobacco settlement payments, subject to the Legislature's approval. The corporation would be governed by a board consisting of the Governor, the Treasurer, the Comptroller and the Attorney General (or designees) and two Senators appointed by the President of the Senate, and two Representatives appointed by the Speaker of the House. After January 7, 2003, the board would include the Chief Financial Officer (or designee), in place of the Treasurer and the Comptroller, as well as the Senate and House appointees. The executive director of the State Board of Administration would serve as the chief executive officer of the corporation.

The bill establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and evaluate methods for protecting the state's settlement revenue from significant loss. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. A non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in equipment, the non-recurring sum of \$2.5 M is appropriated from the Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state. Additionally the University of Florida would receive \$2.5 M from the trust fund to provide on-farm direct assistance to growers in tobacco-producing counties affected by liquidation.

The bill creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

B PRESENT SITUATION:

1. **The Tobacco Settlement**

In February, 1995, the State of Florida commenced a legal action against various tobacco manufacturers and other defendants, asserting various claims for monetary and injunctive relief on behalf of the State of Florida. In March 1997, the State settled all of its claims against Liggett Tobacco Company. On August 25, 1997, the State of Florida entered into a settlement agreement with several of the other tobacco companies named in the suit: Phillip Morris, Reynolds Tobacco, B&W American Brands, and Lorillard (the "Big Four"). These settlement agreements settled all claims which were, or could have been, asserted by the State of Florida, including punitive damages. These cigarette producers currently hold a market share of roughly 93 percent in the U.S. The remaining seven percent of market share is shared by various, smaller producers, but they were not named in the state's suit as defendants and were, therefore, not parties to the settlement.

a. **The tobacco settlement - financial obligations**

The settlement documents (as amended)¹ clearly outline the Big Four's financial obligations to the State of Florida. Apart from other first year payments, Florida is to receive 5 5 percent of the following *unadjusted* amounts, in perpetuity:

<u>Year</u>	1999	2000	2001	2002	2003	thereafter
<u>Amount</u>	\$4.5B	\$5B	\$6.5B	\$6.5B	\$8B	\$8B

Currently, tobacco proceeds are placed in the Lawton Chiles Endowment Fund (the "endowment"), which was legislatively created in 1999. The fund is administered by the State Board of Administration. Portions of the non-recurring moneys received pursuant to the settlement are required to be deposited into this fund, and monies will be disbursed to tobacco funds in various departments depending on appropriations made by law. The State Board of Administration invests monies in the endowment in order to maximize rate of return earned by

¹Florida negotiated a "Most Favored Nations" clause in the settlement which provided the state with additional monies for a period of time after Minnesota settled with the defendants on terms more favorable than Florida's.

the state. Section 215.5601, F.S. Funds from the endowment will not be available for disbursement to state agencies until after July 1, 2000.

After Florida's settlement, the Big Four settled lawsuits with Texas, Mississippi, and Minnesota (collectively, estimated to be worth between \$25 billion to \$40 billion over the next 25 years), and they (along with the other producers who hold the other seven percent market share) have settled with the remaining states in what has been termed the "Master Settlement Agreement" or "MSA". The unadjusted cost of the state settlements ranges between \$212 billion to \$246 billion over the next 25 years. The range is rather broad because these amounts are subject to numerous adjustments, from inflation to fluctuations in cigarette consumption and market share. Therefore, the amount may increase due to inflation, but may decrease if cigarette consumption decreases markedly. Other factors that may affect cigarette consumption include general population growth, cigarette price increases, changes in disposable income, youth consumption, health warnings, smoking bans in public places, nicotine dependence, advertising restrictions, and smoking trends over time.²

b. Legal issues and conflicting signals

Notwithstanding the restrictions and covenants negotiated in the various settlements, a sharply divided U.S. Supreme Court ruled March 21, 2000, that the Food and Drug Administration lacks the power to regulate tobacco products. The 5-4 opinion states that the FDA overstepped its authority in 1996, when it issued unprecedented, sweeping regulations involving cigarettes and smokeless tobacco. The tobacco companies anticipate federal legislation introduced in 2001, that would shift jurisdiction for tobacco from Congress to the FDA.

According to information posted on R. J. Reynolds' website, the states will be provided with up to \$246 billion over the next 25 years which can be used to design local solutions to address underage smoking and to enforce the settlement's new rules and restrictions on cigarette marketing.³ The Philip Morris website declares that

"...cigarettes are a legal product that many adults enjoy, notwithstanding the serious health issues surrounding smoking. Although it is appropriate for governments and health authorities to *encourage* people to avoid risky behaviors, we don't believe that they should *prohibit* adults from choosing to smoke. The decision as to whether or not to smoke should be left to individual adults (emphasis theirs)."⁴

Despite the MSA (or perhaps because of it), and other settlements' requirements to educate about the dangers of smoking, tobacco companies are still active in recruiting. According to a Chicago PRNewswire story dated March 24, 2000, Philip Morris recently launched a \$40

²For instance, according to a report prepared by WEFA, Inc., (an international econometrics and consulting firm), on behalf of the Westchester Tobacco Asset Securitization Corporation, dated December 15, 1999, adult consumption of cigarettes declined 0.65% annually for the period 1965 to 1981, 3.31% for the period 1981 to 1990, and 2.47% for the period 1991 to 1998. According to these trends, consumption could decline from the roughly 530 billion cigarettes consumed in 1990, to under 200 billion cigarettes for the year 2040.

³<http://www.rjrt.com/common/pages/IndexDefault.asp>

⁴http://www.philipmorris.com/tobacco_bus/tobacco_issues/index.html

million advertising campaign called "Find your Voice" which portrays smoking as an alluring act of personal choice and is geared specifically towards women whose ethnicity is Latina, African American and Asian American, which reportedly is a largely untapped demographic for smoking.

What the tobacco companies (and the settling state governments) cannot factor in at this time is the estimated cost of dozens of individual suits and one certified class action (*Engle v. R.J. Reynolds, et. al.*, in Dade County, Florida) that are currently pending around the country.⁵ The presiding officers of the Legislature did request an opinion from the Attorney General on whether Florida law requires that compensatory damages be determined before punitive damages may be awarded. A lengthy response was received on March 27, 2000, and is referenced as AGO 00-21. While the tobacco settlement payments are to be made in perpetuity, there is concern by some that the companies may declare bankruptcy and default on their obligations.

c. Viability of the tobacco companies and the threat of bankruptcy

In a story dated March 26, 2000, the Associated Press reported that the National Association of Attorneys General retained a Los Angeles bankruptcy law firm to insure states receive a combined \$246 billion in tobacco settlements. According to the story, the nation's five biggest cigarette makers owe about \$10 billion this year, and also face a potentially record-setting punitive damages award in the *Engle* trial. The tobacco industry fears an estimated 500,000 sick Florida smokers may be awarded as much as \$100 billion or more – the amount being requested by the plaintiffs' counsel.

According to comments by Salomon Smith Barney, tobacco industry credit fundamentals make bankruptcy of a major manufacturer unlikely due to the significant domestic demand for the addictive product, the profitability of the industry, and the ability of the industry to pass additional costs to consumers in the form of higher prices.⁶ In fact, in a series of scenarios presented by WEFA included within the SSB materials projected an industry settlement three times the size of the MSA (approximately \$700 billion) resulting in a cigarette price increase of more than 50 percent causing a consumption decline of more than 14 percent. WEFA concluded that even in those "extreme and unlikely conditions" consumption is still projected to generate sufficient tobacco settlement revenues to meet the planned principal amortization schedule. While it appears that the industry could shoulder a tremendous hit that is amortized and payed out over time, it is unknown how the industry would react to a jury award of as much as \$100 billion or more that was upheld on appeal and immediately payable.

d. Securitization of tobacco settlement proceeds

To hedge against the uncertain continuation of tobacco settlement payments as a result of a vagarious marketplace, ongoing litigation, and potential bankruptcies, New York local governments securitized portions of tobacco settlement proceeds by issuing bonds through non-profit corporations three times, to date, with a fourth offering in the beginning stages. In

⁵For instance, in early 1999, Philip Morris lost a case in California for \$51.5 million (including punitive damages of \$50 million) and a case in Oregon for \$80.3 million (including punitive damages of \$79.5 million). The punitive damages awards in those cases have been reduced to \$26.5 million and \$32 million, respectively, and are on appeal.

⁶Opinions in Tobacco Settlement Securitization, dated February 29, 2000, page 19.

New York, Medicaid payments are split equally between the state and its counties so the Master Settlement divided New York state's settlement "share" between the state and other political subdivisions, and then again according to population and medical reimbursement. New York City had pursued its own lawsuit against the tobacco companies so it, too, was included within the settlement for New York state.

The separate offerings were issued for Nassau County, Westchester County, and New York City. A fourth, for Erie County, is in the beginning stages. For New York City (offering \$709 million) and Nassau County (offering \$295 million), the non-profit corporations were set up according to New York's existing corporation statutes. For Westchester County (offering \$104 million), an existing law authorizing a non-profit corporation and subsidiaries to own and operate the Westchester Medical Center was used as general authority to proceed with bonding.

Committee staff communicated with the transaction counsel for the Westchester County offering⁷ who provided some insight into the time spent (over one year, beginning immediately after the Master Settlement was reached and signed) structuring the bond issue so that it was finally approved with a favorable rating by the bond rating agencies. According to counsel, the offering was structured similarly to a securitization of receivables from credit card accounts or mortgages, and was very successful. Counsel also opined that there is a market for these securities at this time, but the situation could change if more and more political subdivisions securitize their settlement funds, and/or if the tobacco companies take a major "hit" in a pending lawsuit, like *Engle*.

According to Bank of America, a proponent of securitization, other states considering this option include Alabama, Alaska, Colorado, Illinois, Indiana, Louisiana, Maine, New Mexico, Ohio, Oklahoma, South Carolina and Virginia. Salomon Smith Barney, another proponent, reports that the majority of states are interested and/or open to securitization, while Washington, Idaho, Montana, Wyoming, North Dakota, Minnesota, Indiana, Michigan, West Virginia, Maryland, New Hampshire, Maine and Mississippi are not interested.

e. Advantages and disadvantages of securitization

Generally, the advantages of securitization include transferring the risks associated with the receipt of future settlement payments to bond investors, and generating a large, up-front cash payment for a permanent trust fund or for new capital programs.

The disadvantages to securitization include having to discount the stream of future payments, and the implications for the state if there is a default on any bonds. Even though the bonding issues are not backed by the full faith and credit of the state, the bonds are still associated with the state, which creates a policy issue in the event of a default. This may have major implications for Florida because the Governmental Accounting Standards Board (GASB)⁸ requires that bonds of this type offered in the structure proposed by this bill must be reported as a "blended component unit" of the state and as a bond payable in the Annual Financial Report.

⁷Hawkins, Delafield & Wood, New York, New York.

⁸The GASB is a group of private CPAs that standardized bond reporting requirements for states and municipalities, adherence to which provides consistency and comfort to investors.

2. Florida Tobacco Growers and State Divestiture

In 1933, the United States Congress passed the Agricultural Adjustment Act and since 1938, with the exception of one year, farmers in Florida produced tobacco under a federally controlled quota system that regulates the volume of production. There are now approximately 290 tobacco quota holders in the state. Florida tobacco farmers produce flue-cured tobacco which requires a large investment of capital to purchase quota as well as the infrastructure such as land and specialized equipment. Chapter 94-251, L.O.F., amended the "Medicaid Third-Party Liability Act" effectively removing defenses in tortious litigation by the state against tobacco companies. Since the time Florida settled with the Big Four in 1997, there has been a decline in demand for tobacco, and the Florida quota has been reduced 18 percent, 17 percent, and 18.5 percent, in 1998, 1999, and 2000 production years, respectively, dramatically reducing income opportunities for growers.

To ameliorate this hardship, a Phase II National Tobacco Grower's Settlement Trust was established with approximately \$4.3 million being mailed to Florida farmers and quota holders earlier this year, with an additional \$3.7 million expected to be distributed to farmers and quota holders from the United States Department of Agriculture during the 2000 growing season. Under the "Phase II agreement," Florida growers are scheduled to receive a total of \$58.5 million over a 12-year period. However, the Phase II Settlement proceeds are adjusted downward in anticipation of declines in the volume of cigarettes shipped for domestic consumption or in the event of bankruptcy. To date, there are no state programs to purchase *stranded* agricultural equipment from farmers who want to quit growing tobacco in favor of another, market-friendly crop.

On the state level, the College of Agricultural & Life Sciences, a part of the Institute of Food and Agricultural Sciences of the University of Florida (IFAS), is a statewide organization dedicated to teaching, research, and extension and serves the agricultural, human, and natural resources needs for the State of Florida.

Through a program called Florida FIRST, IFAS strives to develop knowledge in agricultural, human, and natural resources through teaching programs (environmental studies, agri-businesses, education, communications, engineering, social sciences, renewable natural resources, and pre-professional and professional programs), research through application of the natural, biological, and social sciences, and IFAS Extension, which provides Floridians with lifelong learning programs in partnership with county governments and the United States Department of Agriculture.

As many U.S. food, fiber, and other agricultural sectors continue to feel impacts of emerging product forms; shifting consumer preferences; heightened environmental, health and safety concerns; and changing lifestyles, alternative crops, value-added products, global competition, new processing technologies, and biotechnology will stimulate change and increase opportunities for growth.

3. Appeal from Civil Judgment - requirement for posting a supersedeas bond

In the case of a civil judgment resulting in an award of solely monetary damages, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Fla.R.App.P. 9.310(b); Fla Jur 2d, Sec. 161. On December 1 of each year beginning December 1, 1994, the Comptroller of the State of Florida shall set the

rate of interest that shall be payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate. Section 55.03, F.S.

C. EFFECT OF PROPOSED CHANGES:

1. The Tobacco Settlement

The corporation would be governed by a board consisting of the Governor, the Treasurer, the Comptroller, and the Attorney General (or designees) and two Senate members appointed by the President of the Senate, and two House members appointed by the Speaker of the House. After January 7, 2003, the board would include the Chief Financial Officer or its designee, in place of the Treasurer and the Comptroller, as well as the Senate and House appointees. The executive director of the State Board of Administration would serve as the chief executive officer of the corporation.

The bill establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and evaluate methods for protecting the state's settlement revenue from significant loss. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. A non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

2. Florida Tobacco Growers and State Divestiture

To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in tobacco agricultural equipment, the non-recurring sum of \$2.5 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state.

In addition, a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund will be directed to the Institute of Food and Agricultural Sciences of the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation. The vast majority of current tobacco farms are located in North/Central Florida area.

3. Appeal from Civil Judgment - requirement for posting a supersedeas bond

The bill creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million. This bond limitation could have an effect in the *Engle* class action, where an estimated 500,000 sick Florida smokers are seeking \$100 billion in punitive damages.⁹ In depositions taken in

⁹Reference Senate Journal page 1442 for Legislative intent.

May, 2000, Philip Morris' tobacco chief reported that his company could not afford to split even half of what Big Tobacco could be forced to shell out in a landmark smokers' case against the industry. Given that testimony, and without the bond limitation, it is unclear whether the tobacco companies could afford to appeal the verdict.

See, Part II.D., SECTION BY SECTION ANALYSIS, for more detail.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s 215.5600, F.S., providing definitions. This section also establishes the Tobacco Settlement Finance Corporation, a non-profit, public-benefits entity separate from the state. The purpose of the corporation is to purchase from the state its right, title and interest in and to any or all of the tobacco settlement agreement payments and will sell securities backed by the settlement payments, subject to the Legislature's approval. The proceeds from the bond sale will be used to pay the purchase price for the right to the payments. The total principal amount of bonds issued by the corporation shall not exceed \$3 billion, and the principal amount of bonds issued in any single fiscal year is limited to no more than \$1.5 billion, beginning with the 2001, 2002 fiscal year. The rate of interest on the bonds shall have a true interest cost rate of no more than four percent over the yield on U.S. Treasury obligations which have a maturity approximately equal to the average life of such series of bonds.

The corporation will be governed by a board consisting of the Governor, the Treasurer, the Comptroller, and the Attorney General (or designees), until January 7, 2003, at which time the board will include the Chief Financial Officer or its designee, in place of the Treasurer and the Comptroller. The executive director of the State Board of Administration (SBA) will serve as the chief executive officer of the corporation. The board members cannot be sued for any actions taken by them in the performance of their duties under the act. The corporation may elect, appoint, or employ such officers, agents, or employees as the corporation deems advisable. The officers, agents, or employees may be officers, agents, or employees of the state, as was done for the Inland Protection Financing Corporation (ss. 376.3071, 376.3075, F.S.), and the Investment Fraud Restoration Financing Corporation (ss. 517.1203, 517.1204, F.S.).

The corporation will be exempt from state and local taxation, and will not be deemed a special district for purposes of Chapter 189, F.S. (Special Districts), or a unit of government under Part III of Chapter 218, F.S. (Financial Matters Pertaining to Political Subdivisions). Neither the corporation, the purchase agreements entered into by the corporation, nor the bonds issued by the corporation, shall be subject to Chapter 120, F.S. (The Administrative Procedures Act), Part I of Chapter 287, F.S. (Procurement of Commodities, Insurance or Contractual Services), and ss. 215.57 through 215.83, F.S. (The State Bond Act within Chapter 215 - Financial Matters General Provisions). The corporation is authorized to validate any bonds issued pursuant to this act as provided by Chapter 75, F.S. The corporation may contract with the SBA to serve as trustee with respect to bonds issued, invest proceeds, or perform any other duty for the corporation as contracted. The Auditor General is authorized to conduct financial audits of the accounts and records of the corporation. The corporation would be required to use a competitive bidding process consistent with the rules adopted pursuant to the State Bond Act for the selection of service providers and underwriters.

The bonds are not to be construed in any manner as an obligation of the state or any of its agencies. The bonds can only be secured by payments received under the tobacco settlement agreement, and the corporation does not have the power to pledge the credit, the general revenues, or the taxing power of the state or of any political subdivision. The corporation is

prohibited from filing for voluntary bankruptcy until at least one year and one day after which no bonds of the corporation remain outstanding. If, however, the tobacco payments stop for any reason and the bonds go into default the state will not be held accountable to the bondholders. The state does covenant, however, that it will do nothing to impair the creditworthiness of those securities. The bonds that the corporation is authorized to issue are not to exceed a term of 40 years.

The Department of Banking and Finance is authorized, on behalf of the state, to assist the corporation in the execution of its responsibilities, including entering into one or more purchase agreements to sell to the corporation any or all of the state's right, title and interest in and to the tobacco settlement agreement. The department is authorized to covenant to take whatever actions on behalf of the corporation or holders of the bonds to enforce the provisions of the tobacco settlement agreement, and any remedies or rights thereunder. This language, suggested by the Division of Bond Finance, is to help secure a beneficial rate from the bond rating agencies who look favorably on provisions which allow a proxy (in this case the department) to enforce the agreement. The state, although it has sold its rights, still has a compelling interest in the bond residuals to keep the payments forthcoming

Section 2 amends s. 17.41, F.S., conforming it to the changes in light of section 2, above, and clarifying that monies received by the state pursuant to any *residual* interest retained in the tobacco settlement are to be deposited in the clearing trust fund. However, *proceeds* of the sale of the state's right to tobacco settlement payments are to be deposited directly into the Lawton Chiles Endowment Fund. The administrative requirement that the State Board of Administration serve as cash manager for the clearing fund is removed.

Section 3 amends s. 215.5601, F.S., conforming it to the changes in light of section 2, above, and modifies current law appropriations to the endowment fund. The change would require that the \$200 million annually appropriated to the endowment fund during each of the next three fiscal years will be reduced on a dollar-for-dollar basis to the extent that securitization proceeds are deposited in the endowment fund. This essentially replaces the current law appropriation to the endowment with securitization proceeds. This also would assure that if, in FY 2000-2001, a securitization is executed then appropriations for programs from tobacco monies will not be adversely affected.

Section 4 creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

Section 5 establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and to evaluate methods to protect the state's settlement revenue from significant loss. The options available for protecting the economic and non-economic assets include securitization, insurance, self-insurance, model statute, licensing of manufacturers, or a combination. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. Staff support for the task force will be provided by the State Board of Administration, and the term of the task force will expire on July 1, 2001.

Section 6. For the term of 2000-2001, a non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

Section 7. To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in equipment, the non-recurring sum of \$2.5 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold by the Department of Management Services to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state. Proceeds of the resales, less administrative costs, will be deposited in the General Inspections Trust Fund of the Department of Agriculture and Consumer Services.

Section 8. Provides a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation.

Section 9. Provides this bill will take effect upon becoming a law.

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to Economic & Demographic Research the fiscal impact of this bill is indeterminate and will depend on the amount of the future settlement payments, the size of the bond issue and the structure of the bond securitization.

2. Expenditures:

<u>FY 2000-2001</u>	<u>FY 2001-2002</u>
General Revenue Fund	\$ 100,000
Tobacco Trust Fund	\$5,000,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See, Part III.A.1.and 2., above.

2 Expenditures:

See, Part III.A.1., above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

STORAGE NAME: h1721s1z.fs

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The impact is indeterminate, and depends on the amount of the future settlement payments, the size of the bond issue and the structure of the bond securitization.

Florida tobacco farmers attempting to change crop production from tobacco to another crop may receive assistance both in the purchase of their tobacco-agricultural equipment through the Department of Agriculture and Consumer Services, and in direct, on-farm assistance through the Institute of Food and Agricultural Sciences of the University of Florida.

D. FISCAL COMMENTS:

N/A

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the total aggregate percentage of a state tax shared with counties and municipalities to below February 1, 1989 levels.

V COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bonds would not be a debt or obligation of the state. If, after the securitization process, the tobacco payments stopped for any reason, the bonds would simply go into default and there would be no recourse against the state by bond holders.

B. RULE-MAKING AUTHORITY:

None is authorized under the bill.

C. OTHER COMMENTS:

During the 2000 legislative Session, the House and Senate considered legislative initiatives to protect the State's tobacco settlement revenues from significant loss and other tobacco-related consequences of the State's tobacco litigation - including the impact on the state's tobacco farmers and quota holders. The Senate appointed a Select Committee on Tobacco to examine the potentially substantial and imminent threats to the settlement proceeds. This Committee held extensive hearings during which a variety of witnesses gave testimony on the array of those threats (including the potential threat posed by the *Engle* case) and the need to address them.

Subsequently, comprehensive tobacco-related legislation was considered to protect the State's settlement proceeds and otherwise further the purposes of the tobacco settlement agreement, including: securitization of the settlement funds (HB 1721), prohibitions on the sale and transportation of "gray market" tobacco products (HB 1941); methods for dealing with the threat to recovery of settlement proceeds created by a potentially large punitive damage award in the *Engle v. R.J. Reynolds, et al.* class action, now pending in Miami (SB 1720); transition programs for tobacco farmers to alternative crops (SB 2446); passage of a tax on tobacco

manufacturers who are not signatories to the State's tobacco settlement (SB 1998); creation of the Task Force on Tobacco-Settlement-Revenue Protection (SB 2168); and funding of the Lawton Chiles Endowment Fund (SJR 1008). (Senate Journal pp. 810-812)

Ultimately, CS/HB 1721 was the number assigned to the comprehensive report developed by the Legislative Conference Committee appointed to resolve the differences in the House and Senate versions of bills relating to the protection of the tobacco settlement proceeds and the disposition of the resulting funds.

Passage of the Conference Committee's Report elicited specific explanations in both the House and the Senate. Section 4 of the bill addresses a potential constitutional defect with present law. Requiring a supersedeas bond in an amount which essentially prohibits a defendant from exercising its rights of appeal could result in a denial of the party's due process rights. If this issue was not legislatively addressed, it could result in the need for extensive litigation in cases such as the *Engle* case. Such litigation could lead to more confusion and uncertainty in regards to the ability of Florida to recover proceeds from the tobacco settlements or to securitize those proceeds. Senator Rossin's comments can be found in the Senate Journal on page 1442. The following statement was read by Representative Les Miller prior to the House vote on the Conference Report and may be found in tape recorded form in the House Clerk's Office.

REPRESENTATIVE L. MILLER: Thank you, Mr. Speaker. I'd like to read something -- a statement into the record before we vote on this bill. I think -- I want to congratulate and commend Representative Lacasa and Representative Gottlieb on the fine work that they've done on this Conference Committee. But, I think we need to read something into this statement -- to make something perfectly clear. With respect to Section 4 of the bill that deals with supersedeas bonds, I want to confirm that the language that includes --the language -- that this language includes the content of Senate Bill 1720 as it relates to supersedeas bonds; that to the extent that this applies, the "Whereas" clause of Senate Bill 1720 which was not included in this Conference Report explains the intent of the Legislature in passing this section; and that the provision is intended to apply to the current *Engle* case

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Disposition of the House Bill

HB 1721 was prefiled by Representative Lacasa on March 6, 2000, and introduced the following day. On March 10, 2000, the bill was referred to the Committees on Financial Services, Governmental Rules & Regulations, Finance & Taxation, and General Appropriations. The Financial Services Committee passed the bill out unanimously as a Committee Substitute on April 3, 2000. The original bill differs from the committee substitute in that the committee substitute version:

- Caps the maximum interest rate for the bonds at 12 percent;
- Replaces a broad exemption of the corporation from Chapter 215, F.S., with a narrowly defined exemption to include the provisions of the State Bond Act only;

- Requires that selection of certain professional service providers be made in a manner consistent with rules of the State Bond Act, through a competitive bidding process;
- Clarifies that the Auditor General may perform audits as deemed appropriate; and
- Authorizes the department to covenant to take whatever actions are necessary on behalf of the corporation or holders of the bonds issued by the corporation to enforce the provisions of the tobacco settlement agreement.

The Bill was withdrawn from the Committee on Governmental Rules & Regulations on April 18, 2000. On April 26, the Committee on Finance & Taxation amended the CS and passed it out by a vote of 10 - 2. These amendments:

- Modify the board of directors of the Tobacco Settlement Financing Corporation to include two members appointed by the President of the Senate, and two members appointed by the Speaker of the House. After the amendment, the board will be composed of four members of the executive branch and four members of the legislature. This will assure that the legislature is involved in decisions related to implementing a securitization.
- Authorize the Corporation to purchase insurance or reinsurance products. This change is meant to allow for the purchase of insurance (if that is desirable) in addition to or as a supplement to the protection afforded by the securitization. This provision does not envision the purchase of insurance directly as an alternative to securitization as contemplated by the Senate's proposal. If the legislature wants to purchase insurance, it can do that directly without having to use the Finance Corporation as the mechanism to purchase insurance.
- Limit the amount of debt that can be issued by the Corporation. This provision is intended to provide assurance to the legislature regarding the amount of the securitization to be implemented. In addition, this amendment replaces the maximum borrowing rate of 12% currently in the bill with a borrowing rate of no more than 4 percent over the yield on U.S. treasury bonds.
- Make technical changes.
- Provide language necessary for rating agency requirements in dealing with bankruptcy preference issues. These changes help the rating analysis and the resulting bond rating.
- Make it explicit that securitization is a sale from a legal standpoint and not security for a borrowing which would be treated differently by the rating agencies. In addition, this amendment corrects a drafting error.
- Modify current law appropriations to the endowment fund. The change would require that the \$200 million annually appropriated to the endowment fund during each of the next three fiscal years will be reduced on a dollar-for-dollar basis to the extent that securitization proceeds are deposited in the endowment fund. This essentially replaces the current law appropriation to the endowment with securitization proceeds. This also would assure that if, in FY 2000-2001, a securitization is executed then appropriations for programs from tobacco monies will not be adversely affected.
- Explicitly state that no contract or other agreement entered into by the corporation, under the authority granted in this act, may be construed to bind or otherwise restrict the legislature

The bill was withdrawn from the General Appropriations Committee on April 27, 2000. The bill passed the House, as amended, on May 3, 2000, by a vote of 88 - 29. The bill was sent to the Senate, where it was referred to the Committee on Governmental Oversight and Productivity.

On May 3, the Senate reconsidered the vote by which the Senate bill passed, and also voted to withdraw HB 1721 from the Senate Committee on Governmental Oversight and Productivity. The Senate then substituted the House Bill for CS/CS/SB 1998 and laid the Senate bill on the table. The Senate amended the House bill with the provisions of the laid Senate Bill and the provisions of several other tobacco settlement-related Senate bills (CS/SB 1720, SB 2168 & CS/SB 2446) which had passed in sequence with CS/CS/SB 1998 (SJ 811, 812). The amended bill was sent back to the House, which refused to concur on May 4, 2000. A conference committee was appointed. On May 5, 2000, the Conference Committee Report was received and adopted by the House. The amendments:

- Establish The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and to evaluate methods to protect the state's settlement revenue from significant loss, and provide an appropriation of \$100,000 from the General Revenue Fund to the SBA to support the operations of the task force
- Appropriate \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop;
- Provide a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation; and
- Create a new section in Chapter 768 (s. 768.733, F.S.), establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

CS/HB 1721 was passed as amended by the Conference Committee Report by a vote of 115 - 0. The Senate received the bill as amended and passed the bill by a vote of 39 - 0.

Disposition of the Senate Bill:

Senate bill 1998 (Horne) was introduced on March 7, 2000, and referred to the Committees of Governmental Oversight and Productivity, Health, Aging and Long-term Care, and Fiscal Resource. On April 25, 2000, the Committee on Governmental Oversight and Productivity amended the bill and passed it unanimously as a Committee Substitute. The bill created a cigarette surtax, and provided an opportunity for tobacco manufacturers to be signatories to a specified settlement agreement and be participating manufacturers, thus exempting them from a state surtax on cigarettes not manufactured by a participating manufacturer, as defined by the act.

Among other technical changes, the committee substitute provided that:

- All tobacco manufacturers that are signatories to the settlement agreement entered on August 25, 1997, in the case of *The State of Florida et. al. v. American Tobacco Company, et. al.*, and the settlement agreement entered on March 15, 1996, in the case of *State of West Virginia, State of Florida, State of Mississippi, Commonwealth of Massachusetts, and State of Louisiana v. Brooke Group Ltd. and Liggett Group, Inc.*, are participating manufacturers. Cigarettes produced by each such manufacturer that fully complies with the applicable settlement agreement and makes the annual payment required under the agreement by December 31 are exempt from the surtax on cigarettes imposed under s. 210.02(6) for the subsequent 12-month period.
- Funds received from participating manufacturers will be deposited into the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund
- The Legislature may not appropriate more than 85 percent of the revenue that is received from participating manufacturers or pursuant to s. 210.02, F.S., in any fiscal year and made available for appropriation in the subsequent fiscal year. Revenue received from participating manufacturers or pursuant to s. 210.02, F.S., in any fiscal year which is not appropriated by the Legislature must be deposited into the Lawton Chiles Endowment Fund.
- For all fiscal years subsequent to fiscal year 2002-2003, a minimum of \$25 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Lawton Chiles Endowment Fund for Health and Human Services.
- Beginning February 1, 2001, for cigarettes not manufactured by a participating manufacturer as defined in s. 215.5601, F.S., an additional surtax will be added to the amounts otherwise provided in the section. The division is required to calculate the surtax on January 1 of each year, and the surtax must apply on February 1. The per package surtax is calculated in the same manner as the amount that otherwise would be paid directly to the state by a participating manufacturer (per package rate based on the total annual payment due to the state pursuant to the settlement agreement in the case of *The State of Florida et al. v. American Tobacco Company et. al.*, divided by the total number of packages of cigarettes delivered to wholesale dealers for sale in Florida by the four settling manufacturers during the previous 12 months, rounded to the nearest tenth of a cent).
- The division is to certify to the Comptroller, month to month, the amount derived from the cigarette surtax imposed by s. 210.02(6), F.S., and that amount must be transferred from the Cigarette Tax Collection Trust Fund and credited to the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund.

The bill was withdrawn from the Committee on Health, Aging and Long-term Care on April 26, 2000, and passed out unanimously by the Committee on Fiscal Resource that same day. On April 28, the bill was amended on the Floor of the Senate. The amendment added to the bill the House provision regarding the Tobacco Settlement Financing Corporation. The Senate passed the bill as amended by a vote of 40 - 0, on May 2, 2000.

On May 3, the Senate reconsidered the vote by which the Senate bill passed, and also voted to withdraw HB 1721 from the Senate Committee on Governmental Oversight and Productivity. The Senate then substituted the House Bill for the Senate Bill and laid the

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Senate bill on the table. The Senate amended the House bill with the provisions of the Senate Bill that was laid on the table and sent back to the House, which refused to concur on May 4, 2000. A conference committee was appointed. On May 5, 2000, the Conference Committee Report was received and adopted by the House. CS/HB 1721 was passed as amended by the Conference Committee Report by a vote of 115 - 0. The Senate received the bill as amended and passed the bill by a vote of 39 - 0.

VII SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins

AS FURTHER REVISED BY THE COMMITTEE ON FINANCE & TAXATION:

Prepared by:

Staff Director:

Kama D.S. Monroe

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins



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House 1721: Relating to Tobacco Settlement Proceeds

H 1721 GENERAL BILL/CS/2ND ENG by Financial Services (CAC); Lacasa; Fasano; (CO-SPONSORS) Byrd; Maygardon; Crow; Bitner; Rubio; Fennoy (Compare CS/1ST ENG/S 1720, CS/CS/1ST ENG/S 1998, 1ST ENG/S 2168)

Tobacco Settlement Proceeds; creates Tobacco Settlement Financing Corp.; authorizes corporation to enter into certain purchase agreements with Banking & Finance Dept. for certain purposes; exempts corporation from taxation; provides for additional funding of Lawton Chiles Endowment Fund, prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class-action suits, etc. Creates 215.56005, 768.733; amends 17.41, 215.5601. APPROPRIATION: \$5,100,000. EFFECTIVE DATE: 05/09/2000.

03/06/00 HOUSE Prefiled

03/07/00 HOUSE Introduced -HJ 00112

03/10/00 HOUSE Referred to Financial Services (CAC); Governmental Rules & Regulations (PRC); Finance & Taxation (FRC); General Appropriations (FRC) -HJ 00284

03/30/00 HOUSE On Committee agenda-- Financial Services (CAC), 04/03/00, 3:15 pm, 214-C

04/03/00 HOUSE Comm. Action: CS by Financial Services (CAC); YEAS 10 NAYS 0 -HJ 00539

04/12/00 HOUSE CS read first time on 04/12/00 -HJ 00531; Pending review of CS under Rule 113 -HJ 00539

04/14/00 HOUSE Now in Governmental Rules & Regulations (PRC) -HJ 00539

04/18/00 HOUSE Withdrawn from Governmental Rules & Regulations (PRC) -HJ 00557; Now in Finance & Taxation (FRC)

04/25/00 HOUSE On Committee agenda-- Finance & Taxation (FRC), 04/26/00, 8:00 am, Morris Hall --Pending reconsideration

04/26/00 HOUSE On Committee agenda-- Finance & Taxation (FRC), 04/26/00, 5:00 pm, Morris Hall; Comm. Action: Favorable with 12 amendment(s) by Finance & Taxation (FRC); YEAS 14 NAYS 2 -HJ 00835; Now in General Appropriations (FRC) -HJ 00835

04/27/00 HOUSE Withdrawn from General Appropriations (FRC) -HJ 00888; Placed on Calendar

04/28/00 HOUSE Placed on Special Order Calendar; Read second time -HJ 01181; Amendment(s) adopted -HJ 01182

05/03/00 HOUSE Read third time -HJ 01471; CS passed as amended; YEAS 80 NAYS 29 -HJ 01471

05/03/00 SENATE In Messages; Received, referred to Governmental Oversight and Productivity -SJ 01002; Immediately withdrawn from Governmental Oversight and Productivity -SJ 00987; Substituted for CS/CS/SB 1998 -SJ 00987; Read second time -SJ 00987; Amendment(s) adopted -SJ 00987; Read third time -SJ 00994; CS passed as amended; YEAS 39 NAYS 0 -SJ 00994; Conference Committee appointed; Senator Burt, Chair; Horne, Rossin; In the event the House refuses to concur -SJ 00994

05/03/00 HOUSE In returning messages

05/04/00 HOUSE Refused to concur -HJ 01533; Conference Committee appointed; Representatives Lacasa, Gay, Gottlieb -HJ 01540

05/05/00 HOUSE Conference Committee Report received -HJ 02226; Conference Committee Report adopted -HJ 02230; Passed as amended by Conference Committee Report; YEAS 115 NAYS 0 -HJ 02230

05/05/00 SENATE In returning messages; Conference Committee Report received -SJ 01438; Conference Committee Report adopted -SJ 01442; Passed as amended by Conference Committee Report; YEAS 38 NAYS 0 -SJ 01442; Reconsidered -SJ 01442; Passed as amended by Conference Committee Report; YEAS 39 NAYS 0 -SJ 01442

05/05/00 HOUSE Ordered engrossed, then enrolled -HJ 02441

05/09/00 Signed by Officers and presented to Governor; Approved by Governor; Chapter No. 2000-128

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H 1721	08/28/2000	Web Page PDF
H 1721C1	08/28/2000	Web Page PDF
H 1721E1	08/28/2000	Web Page PDF
H 1721E2	08/28/2000	Web Page PDF
H 1721ER	08/28/2000	Web Page PDF

Amendments: (Top)

H 1721 Amendment ID	Date Posted	Available Formats
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H 1721C1 Amendment ID	Date Posted	Available Formats	
120761	04/28/2000	Web Page PDF	4/23 HFTX
140411 - 4	04/28/2000	Web Page PDF	"
143645 - 2	04/28/2000	Web Page PDF	"
331885 - 2	04/28/2000	Web Page PDF	"
455845 - 10	04/28/2000	Web Page PDF	"
520241 - 2	04/28/2000	Web Page PDF	"
625605 - 4	04/28/2000	Web Page PDF	"
634283 - 6	04/28/2000	Web Page PDF	"
813187 - 1	04/28/2000	Web Page PDF	"
845963 - 9	04/28/2000	Web Page PDF	"
864939 - 11	04/28/2000	Web Page PDF	"
922985 - 3	04/28/2000	Web Page PDF	"

H 1721E1: Amendment ID	Date Posted	Available Formats	
090144	05/04/2000	Web Page PDF	5/3 5004 inc 5AFL

H 1721E2: Amendment ID	Date Posted	Available Formats
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H 1721ER: Amendment ID	Date Posted	Available Formats
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Analysis ID	Sponsor	Available Formats
H 1721	Financial Services	PDF 3/14
H 1721S1	Financial Services	PDF 4/3
H 1721S1	Finance and Taxation	PDF 4/27
H 1721S1A	Finance and Taxation	PDF 4/26
H 1721s1z	Financial Services	PDF 7/13

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Senate 1720: Relating to Class-action Suits/Punitive Damages

S 1720 GENERAL BILL/CS/1ST ENG by Governmental Oversight and Productivity;

Latvala (Compare CS/2ND ENG/H 1721)

Class-action Suits/Punitive Damages; prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class-action suits, pending appellate review; provides for application of act to certain pending cases. Creates 768.733. EFFECTIVE DATE: Upon becoming law.

- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity -SJ 00102
- 04/20/00 SENATE On Committee agenda-- Governmental Oversight and Productivity, 04/25/00, 9:00 am, 37-S
- 04/25/00 SENATE Comm. Action:-CS by Governmental Oversight and Productivity; YEAS 7 NAYS 0 -SJ 00522; CS read first time on 04/26/00 -SJ 00524
- 04/26/00 SENATE Placed on Calendar -SJ 00522
- 04/28/00 SENATE Placed on Special Order Calendar -SJ 00581; Read second time -SJ 00627; Amendment(s) adopted -SJ 00627; Amendment pending -SJ 00627
- 05/01/00 SENATE Placed on Special Order Calendar -SJ 00628; Pending amendment adopted -SJ 00630; Amendment(s) adopted -SJ 00630; Ordered engrossed -SJ 00630
- 05/02/00 SENATE Read third time -SJ 00811; CS passed as amended, YEAS 37 NAYS 2 -SJ 00812
- 05/02/00 HOUSE In Messages
- 05/04/00 SENATE Requested House to return -SJ 01087
- 05/05/00 HOUSE Died in Messages, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 1721 (Ch. 2000-128)

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Bill Name	Date Posted	Available Formats
S 1720	08/25/2000	Web Page PDF
S 1720C1	08/25/2000	Web Page PDF
S 1720E1	08/25/2000	Web Page PDF

Committee Amendments and Filed Floor Amendments: (Top)

S 1720:

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S 1720C1:

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095084 1	04/28/2000 209	Web Page PDF
185014 3	05/03/2000 211	Web Page PDF
201880 2	04/28/2000 210	Web Page PDF
373154 6	05/03/2000 219	Web Page PDF
465668 7	05/03/2000 212	Web Page PDF
685110 7	05/03/2000 213	Web Page PDF
691034 7	05/03/2000 216	Web Page PDF

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Amendment ID	Date Posted	Available Formats

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Analysis ID	Sponsor	Available Formats
S 1720	Governmental Operations	PDF 4/1/00

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STATUTE CITATIONS: (Top)

0768 733

CONSTITUTION CITATIONS:

NO CONSTITUTION CITATIONS FOUND FOR REQUESTED BILL



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Senate 1998: Relating to State Revenue

(3/11)

S 1998 GENERAL BILL/CS/CS/1ST ENG by Fiscal Resource; Governmental Oversight and Productivity; Home (Compare CS/2ND ENG/H 1721)

State Revenue; defines term "participating manufacturer"; provides for funds received from participating manufacturers to be deposited into Tobacco Settlement Clearing TF; provides for portion of unappropriated funds to be deposited into Lawton Chiles Endowment Fund; creates Tobacco Settlement Financing Corporation; provides for purchase of insurance & for issuance of bonds; provides limitation on liability, etc. Amends 210 02, .20, 215.5601; creates 215.5603. EFFECTIVE DATE: Upon becoming law.

- 03/07/00 SFNATE Filed
- 03/09/00 SENATE Introduced, referred to Governmental Oversight and Productivity; Health, Aging and Long-Term Care, Fiscal Resource -SJ 00181
- 04/20/00 SENATE On Committee agenda-- Governmental Oversight and Productivity, 04/25/00, 9:00 am, 37-S
- 04/25/00 SENATE Comm. Action: CS by Governmental Oversight and Productivity; YEAS 7 NAYS 0 -SJ 00521; CS read first time on 04/26/00 -SJ 00524
- 04/26/00 SENATE Now in Health, Aging and Long-Term Care -SJ 00521; Withdrawn from Health, Aging and Long-Term Care -SJ 00497; Now in Fiscal Resource; On Committee agenda-- Fiscal Resource, 04/26/00, 1:00 pm, 110-S -SJ 00498; Comm. Action:-CS/CS by Fiscal Resource; YEAS 7 NAYS 0 -SJ 00582; CS read first time on 04/27/00 -SJ 00590
- 04/27/00 SENATE Placed on Calendar -SJ 00582
- 04/28/00 SENATE Placed on Special Order Calendar -SJ 00581; Read second time -SJ 00627; Amendment(s) adopted -SJ 00628; Amendment(s) failed -SJ 00628; Ordered engrossed -SJ 00628
- 05/02/00 SENATE Read third time -SJ 00811; CS passed as amended; YEAS 40 NAYS 0 -SJ 00811
- 05/02/00 HOUSE In Messages
- 05/03/00 SENATE Requested House to return -SJ 00952
- 05/03/00 HOUSE Returned -HJ 01526
- 05/03/00 SENATE In returning messages; Reconsidered -SJ 00987; House Bill substituted -SJ 00987; Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 1721 (Ch. 2000-128)

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Bill Name	Date Posted	Available Formats
S 1998	08/25/2000	Web Page PDF
S 1998C1	08/25/2000	Web Page PDF
S 1998C2	08/25/2000	Web Page PDF
S 1998E1	08/25/2000	Web Page PDF

Committee Amendments and Filed Floor Amendments: (Top)

S 1998:

Amendment ID	Date Posted	Available Formats
S 1998C1:		

Amendment ID	Date Posted	Available Formats
S 1998C2:		
Amendment ID	Date Posted	Available Formats
295114 2 8	05/03/2000	1 Web Page PDF 4/23 8:55 11
640888 2	04/28/2000	2 Web Page PDF 4/27 4:00 C
650588 2 2	05/03/2000	1 Web Page PDF 4/23 1:38 2
763716 2	04/28/2000	1 Web Page PDF 4/27 10:00 2
S 1998E1:		
Amendment ID	Date Posted	Available Formats
340944 3 2 2	05/03/2000	1 Web Page PDF 5/1 8:00
701528 3 2 1	05/03/2000	1 Web Page PDF

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Analysis ID	Sponsor	Available Formats
S 1998	Fiscal Resource	1 PDF 4/23 8:55 11
S 1998	Governmental Operations	1 PDF 4/27 4:00 C

Vote History: (Top)

Chamber	Roll Call	Vote Date	Available Formats
SENATE	0061	05/02/2000	1 HTML

Citations: (Top)

STATUTE CITATIONS: (Top)

- [0210.02](#)
- [0210.20](#)
- [0215.5601](#)
- [0215.5603](#)

CONSTITUTION CITATIONS:

NO CONSTITUTION CITATIONS FOUND FOR REQUESTED BILL.



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Senate 2168: Relating to Tobacco-Settlement-Revenue

S 2168 GENERAL BILL/1ST ENG by Burt (Compare CS/2ND ENG/H 1721)

Tobacco-Settlement-Revenue; creates Task Force on Tobacco-Settlement-Revenue Protection; provides for membership & duties; provides for staff; provides for expiration of task force.
 APPROPRIATION: \$100,000. EFFECTIVE DATE: Upon becoming law.
 03/07/00 SENATE Filed
 03/15/00 SENATE Introduced, referred to Governmental Oversight and Productivity; Fiscal Policy -SJ 00203
 04/20/00 SENATE On Committee agenda-- Governmental Oversight and Productivity, 04/25/00, 9:00 am, 37-5
 04/25/00 SENATE Comm. Action: Favorable by Governmental Oversight and Productivity; YEAS 6 NAYS 0 -SJ 00520
 04/26/00 SENATE Now in Fiscal Policy -SJ 00521; On Committee agenda-- Fiscal Policy, 04/26/00, 1:00 pm, 412-K -SJ 00498; Comm. Action:-Favorable with 1 amendment(s) by Fiscal Policy; YEAS 7 NAYS 0 -SJ 00581
 04/27/00 SENATE Placed on Calendar -SJ 00581
 04/28/00 SENATE Placed on Special Order Calendar -SJ 00581; Read second time -SJ 00627; Amendment(s) failed -SJ 00627; Amendment(s) adopted -SJ 00627; Ordered engrossed -SJ 00627
 05/02/00 SENATE Read third time -SJ 00811; Passed as amended; YEAS 38 NAYS 0 -SJ 00811
 05/02/00 HOUSE In Messages
 05/04/00 SENATE Requested House to return -SJ 01087
 05/05/00 HOUSE Died in Messages, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 1721 (Ch. 2000-128)

Bill Text: (Top)

Bill Name	Date Posted	Available Formats
S 2168	08/25/2000	Web Page PDF
S 2168E1	08/25/2000	Web Page PDF

Committee Amendments and Filed Floor Amendments: (Top)

S 2168:

Amendment ID	Date Posted	Available Formats
464950	04/28/2000	Web Page PDF
565252	05/03/2000	Web Page PDF
763432	04/28/2000	Web Page PDF

S 2168E1:

Amendment ID	Date Posted	Available Formats
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Staff Analysis: (Top)

Analysis ID	Sponsor	Available Formats
S 2168	Fiscal Policy	PDF
S 2168	Governmental Operations	PDF

1. Indiv.

Scouts

For Indiv. 2005

Subject: Law of Tobacco

By Senator Latvala

19-684-00

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A bill to be entitled
An act relating to state government; expressing
the legislative intent to revise the laws in
order to make state government more responsive
to the needs of the public; providing an
effective date.

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

Section 1. The Legislature intends to revise the laws
in order to make state government more responsive to the needs
of the public.

Section 2. This act shall take effect upon becoming a
law.

SENATE SUMMARY

Expresses the intent to revise the laws in order to make
state government more responsive to the needs of the
public.

Advisory Legal Opinion

Number: AGO 2000-21

Date: March 27, 2000

Subject: Courts, assessment of punitive damages

The Honorable Toni Jennings
President, The Florida Senate
Room 418, Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable John E. Thrasher
President, Florida House of Representatives
Room 420, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

RE: COURTS--DAMAGES--Assessment of punitive damages prior to
compensatory damages.

Dear Madam President and Mr. Speaker:

You have asked substantially the following question:

Does Florida law require that compensatory damages be determined
before punitive damages may be awarded?

In sum:

Florida's common law requires that an award of compensatory
damages is a prerequisite to an award of punitive damages where
actual damage is an essential element of the underlying tort.

A number of Members and senior staff of both the House of
Representatives and the Senate have contacted this office and
asked my advice about the posture of the protracted *Engle* class
action litigation. [1] Based on your request and pursuant to
section 16.01(3), Florida Statutes, it is appropriate in my role
as the chief legal officer of this State that I apprise each of
you, in your role as Speaker of the Florida House of
Representatives and President of the Florida Senate, regarding

By the Committee on Governmental Oversight and Productivity;
and Senator Latvala

302-2180A-00

1 A bill to be entitled
2 An act relating to punitive damages in
3 class-action suits; creating s. 768.733, F.S.;
4 prescribing the amount of bond or equivalent
5 surety required to stay the execution of
6 punitive-damages judgments in class-action
7 suits, pending appellate review; providing for
8 application of the act to certain pending
9 cases; providing an effective date.
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11 WHEREAS, the State of Florida is reviewing options to
12 protect its receipt of payments under the tobacco settlement
13 agreement entered into by the state and participating
14 manufacturers in settlement of "State of Florida et al. v.
15 American Tobacco Co.," Case No. 95-1466AH (Fla. 15th Cir. Ct.,
16 1996), and
17 WHEREAS, the action by the State of Florida which was
18 the subject of the settlement agreement was brought to recover
19 compensatory and punitive damages from the settling
20 manufacturers, and all such claims were settled, and
21 WHEREAS, other claims have been filed and may be filed
22 under the laws of this state for damages of injured
23 individuals and for punitive damages to vindicate and punish
24 the same or similar conduct that was the subject of the action
25 by the State of Florida against the settling manufacturers,
26 and
27 WHEREAS, the State of Florida itself would be at risk
28 in its continued receipt of settlement payments if the ability
29 of participating manufacturers to make the payments were
30 threatened by a requirement that the manufacturers immediately
31 pay massive awards of punitive damages, and

Advisory Legal Opinion

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Representatives and the Senate have contacted this office and
asked my advice about the posture of the protracted *Engle* class
action litigation.[1] Based on your request and pursuant to
section 16.01(3), Florida Statutes, it is appropriate in my role
as the chief legal officer of this State that I apprise each of
you, in your role as Speaker of the Florida House of
Representatives and President of the Florida Senate, regarding

the legal considerations relevant to the matters of concern which have been presented.

In 1994, this multiple count suit was filed in the Dade County Circuit Court against major tobacco companies. Several procedural controversies ensued with attendant intervening interlocutory appeals, the assignment of a new trial court judge, and a jury determination of liability without a damages determination. Additional procedural controversies followed with intervening interlocutory appeals.[2] The current trial court judge eventually adopted a trial plan whereby the jury would determine "lump-sum" punitive damages prior to determining compensatory damages for each individual class member.

Florida law is clear that compensatory damages must be determined prior to any award of punitive damages in cases of this nature. In *Ault v. Lohr*, [3] the Supreme Court of Florida stated: "The law is well settled that punitive damages require an underlying award of compensatory damages." Chief Justice Ehrlich stated in a specially concurring opinion that where actual harm is an element of the tort, "an award of compensatory damages must be a prerequisite to an award of punitive damages." [4]

The Supreme Court of Florida in *W.R. Grace & Company v. Waters*[5] reaffirmed that liability and compensatory damages must be assessed before punitive damages:

We hold that henceforth trial courts, when presented with a timely motion, should bifurcate the determination of the amount of punitive damages from the remaining issues at trial. At the first stage of a trial in which punitive damages are an issue, the jury should hear evidence regarding liability for actual damages, the amount of actual damages, and liability for punitive damages, and should make determinations on those issues. If, at the first stage, the jury determines that punitive damages are warranted, the same jury should then hear evidence relevant to the amount of punitive damages and should determine the amount for which the defendant is liable.

Most recently, the Florida Supreme Court in *Owens-Corning Fiberglass Corporation v. Ballard*[6] held that in assessing punitive damages, a jury must consider "the harm that actually has occurred."

The concept that compensatory damages must be determined before punitive damages are awarded is not unique to Florida. For example, in *Allison v. Citgo Petroleum Corporation*, [7] the Fifth Circuit held that "punitive damages must be determined after proof of liability to individual plaintiffs . . . not upon the

mere finding of general liability to the class."

This requirement that compensatory damages must be determined before punitive damages is based on constitutional concerns of due process. As the United States Supreme Court has made clear, the due process clause of the Fourteenth Amendment prohibits the state from imposing a grossly excessive punishment on a tortfeasor. [8]

In determining whether an award is excessive, the courts have examined the ratio between compensatory damages and punitive damages. While not the sole factor to be considered, this relationship is, nevertheless, a critical element in determining whether the due process clause is implicated. [9]

The courts have recognized that there is no fixed ratio between compensatory and punitive damages that is to be uniformly applied in every case. For example, in *TXO Production Corporation*, [10] the United States Supreme Court stated:

"We need not, and indeed cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness . . . properly enter[s] into the constitutional calculus."

Thus, the common law clearly requires that the amount of punitive damages must bear a reasonable relationship to compensatory damages. As the Fifth Circuit Court of Appeal explained in *Allison v. Citgo Petroleum Corporation*, *supra*,

"[B]ecause punitive damages must be reasonably related to the reprehensibility of the defendant's conduct and to the compensatory damages awarded to the plaintiffs, [citations omitted] recovery of punitive damages must necessarily turn on the recovery of compensatory damages."

Thus, punitive damages must be determined after proof of liability to individual plaintiffs at the second stage of a pattern or practice case, not upon the mere finding of general liability to the class at the first stage. Moreover, being dependent on non-incidenta compensatory damages, punitive damages are also non-incidenta--requiring proof of how [damage] was inflicted on each plaintiff introducing new and substantial legal and factual issues, and not being capable of computation by reference to objective standards. [11]

In the absence of any determination of the extent of compensatory damages, the court lacks a standard by which it can judge whether an assessment of punitive damages is reasonable or

is "grossly excessive."

The Supreme Court of Florida has recognized the danger of unlimited discretion in awarding punitive damages. In *W.R. Grace & Company--CONN v. Waters*, [12] the Court stated that unlimited jury discretion or unlimited judicial discretion in fixing punitive damages may invite extreme results that "jar one's constitutional sensibilities."

The recognition that compensatory damages must be determined before punitive damages are assessed is also reflected by the statutes addressing punitive damages. Section 768.73, Florida Statutes, contemplates that punitive damages will generally be a ratio to compensatory damages.

In the event the Legislature should determine that legislation seeking to codify the common law regarding the imposition of compensatory and punitive damages is needed, I am attaching a copy of proposed legislation addressing this issue. [13] The proposed bill would make clear that it applies to all pending actions. [14]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/hrd

[1] *R.J. Reynolds Tobacco Company v. Engle*, No. 94-08273 CA (Fla. 11th Jud. Cir.).

[2] See, *R.J. Reynolds Tobacco Company v. Engle*, 672 So. 2d 39 (Fla. 3d DCA 1996), rev. den., 682 So. 2d 1100 (Fla. 1996); *R. J. Reynolds Tobacco Co. v. Engle*, 711 So. 2d 553 (Fla. 3d DCA 1998); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 689284, 24 Fla. L. Weekly D2061 (Fla. 3d DCA, September 3, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 743 So. 2d 524 (Fla. 3d DCA, September 17, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 767273, 24 Fla. L. Weekly 2193 (Fla. 3d DCA September 17, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 930784, 24 Fla. L. Weekly D2392 (Fla. 3d DCA, October 20, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 1999 WL 961394 (Fla. 3d DCA, October 22, 1999); *R. J. Reynolds Tobacco Co. v. Engle*, 2000 WL 204472 (Fla. 3d DCA, February 24, 2000).

[3] 538 So. 2d 454, 455 (Fla. 1989), quoting *Sonson v. Nelson*,

357 So. 2d 747 (Fla. 3d DCA 1978), cert. den., 364 So. 2d 889 (Fla. 1978), cert. den., 364 So. 2d 891 (Fla. 1978).

[4] 538 So. 2d at 457.

[5] 638 So. 2d 502, 506 (Fla. 1994).

[6] No. 92,963, 1999 W.L. 669026 (Fla. 1999).

[7] 151 F.3d 402, 417-418 (5th Cir. 1998).

[8] See, e.g., *TXO Production Corporation v. Alliance Resources Corporation*, 509 U.S. 443, 454, 113 S.Ct. 2711, 2718 (1993); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 1592 (1996).

[9] See, *BMW of North America, Inc. v. Gore*, supra, setting forth a three-pronged test which includes, as the second element, the ratio between the harm or potential harm suffered by a plaintiff and the punitive damages awarded.

[10] *TXO Production Corporation v. Alliance Resources Corporation*, 113 S.Ct. at 2720, quoting, *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043 (1991).

[11] 151 F.3d at 417-418.

[12] 638 So. 2d 502, 505 (Fla. 1994), citing *Haslip*, supra.

[13] The proposed legislation creates a new statute, s. 768.726, Fla. Stat., which would provide:

"(1) No punitive damages may be awarded in any civil action, including a class action, unless the compensatory damages stage of trial has been completed as to all plaintiffs covered thereby or in the action, whether named parties or represented class members, prior to the determination of punitive damages, except in cases where actual damages are not an element of the underlying cause of action. Any punitive damage determination rendered or judgment entered contrary to the provisions of this subsection is null and void.

(2) This section shall apply to all cases and causes of action, regardless of the date of filing, pending on or after the effective date of this act."

[14] See, *State ex rel. Szabo Food Serv., Inc. of North Carolina v. Dickinson*, 286 So. 2d 529, 531 (Fla. 1973); *In re Cleary Brothers Construction Co., Inc.*, 9 B.R. 40, 30 UCC Rep.Serv.

1444 (Bankr. S.D. Fla., October 23, 1980) (where amendment is merely declarative of existing law, it should be given a retroactive effect).

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By the Committee on Governmental Oversight and Productivity;
and Senator Latvala

302-2180A-00

1 A bill to be entitled
2 An act relating to punitive damages in
3 class-action suits; creating s. 768.733, F.S.;
4 prescribing the amount of bond or equivalent
5 surety required to stay the execution of
6 punitive-damages judgments in class-action
7 suits, pending appellate review; providing for
8 application of the act to certain pending
9 cases; providing an effective date.
10
11 WHEREAS, the State of Florida is reviewing options to
12 protect its receipt of payments under the tobacco settlement
13 agreement entered into by the state and participating
14 manufacturers in settlement of "State of Florida et al. v.
15 American Tobacco Co.," Case No. 95-1466AH (Fla. 15th Cir. Ct.,
16 1996), and
17 WHEREAS, the action by the State of Florida which was
18 the subject of the settlement agreement was brought to recover
19 compensatory and punitive damages from the settling
20 manufacturers, and all such claims were settled, and
21 WHEREAS, other claims have been filed and may be filed
22 under the laws of this state for damages of injured
23 individuals and for punitive damages to vindicate and punish
24 the same or similar conduct that was the subject of the action
25 by the State of Florida against the settling manufacturers,
26 and
27 WHEREAS, the State of Florida itself would be at risk
28 in its continued receipt of settlement payments if the ability
29 of participating manufacturers to make the payments were
30 threatened by a requirement that the manufacturers immediately
31 pay massive awards of punitive damages, and

1 WHEREAS, the purpose of punitive damages is the
2 punishment of each wrongdoer by exacting from his or her
3 pocketbook a sum of money which, according to his or her
4 financial ability, will hurt, but not bankrupt, and

5 WHEREAS, punitive damages require appropriate
6 substantive and procedural safeguards to minimize the risk of
7 unjust punishment, and

8 WHEREAS, while the amount of a punitive-damages
9 judgment should provide retribution and deterrence, it should
10 not financially destroy or bankrupt the defendant or
11 constitute a "grossly excessive" punishment, and

12 WHEREAS, there is no statutorily articulated
13 substantive standard for the courts of this state to apply in
14 order to determine when a punitive-damages judgment is grossly
15 excessive, and

16 WHEREAS, a plaintiff's right to punitive damages is
17 subject to the plenary authority of the Legislature and the
18 establishment or elimination of such a claim is clearly a
19 substantive, rather than a procedural, decision of the
20 Legislature, as recognized in *Alamo Rent-A-Car, Inc. v.*
21 *Mancusi*, 632 So.2d 1352, 1358 (Fla. 1994), and

22 WHEREAS, cases involving punitive damages in class
23 actions frequently involve significant contested legal issues,
24 and parties should be afforded reasonable opportunity to fully
25 pursue their rights in appellate courts without oppressive
26 costs that would effectively eliminate or impair their
27 due-process rights, NOW, THEREFORE,

28

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

30

31

1 Section 1. Section 768.733, Florida Statutes, is
2 created to read:

3 768.733 Punitive damages and bonds in class actions;
4 limitations.--

5 (1) In any civil action that is brought as a certified
6 class action, the court may not enter a judgment for punitive
7 damages against a defendant in an amount that, if fully
8 executed upon, would financially destroy or bankrupt the
9 defendant.

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

16 (3) The required bond or equivalent surety acceptable
17 to the court for imposition of the stay shall be the lowest
18 of:

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

21 (b) One hundred million dollars, regardless of the
22 amount of punitive damages; or

23 (c) Ten percent of the net worth of the defendant as
24 determined by applying generally accepted accounting
25 principles to the defendant's financial status as of December
26 31 of the year prior to the judgment for punitive damages.

27 (4) If, at any time after notice and hearing, the
28 court finds that a defendant who has posted a bond or
29 equivalent surety pursuant to paragraph (3)(b) or paragraph
30 (3)(c) is purposefully moving assets with the intent to avoid
31 the punitive-damages judgment, the court shall increase the

1 bond or equivalent surety to the amount determined pursuant to
2 paragraph (3) (a). If the defendant does not post the
3 additional bond required by the court, the stay shall be
4 revoked.

5 Section 2. This act applies to all cases pending on
6 the effective date of this act in which an award for punitive
7 damages has not been finally reduced to judgment through trial
8 and subsequent appeals and to all cases commenced on or after
9 the effective date of this act.

10 Section 3. This act shall take effect upon becoming a
11 law.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 SB 1720

16 Provides that in any civil action that is a certified class
17 action, the court may not enter a judgment for punitive
18 damages against a defendant in an amount that, if fully
executed upon, would destroy or bankrupt the defendant.

19 Requires the trial court to stay the execution of any
20 judgment, or portion thereof, on account of punitive damages
pending completion of any state appellate review of the
judgment if a bond or equivalent surety is posted as provided.

21 Provides that the bond must be the lowest of: (a) the amount
22 of the punitive damages plus twice the statutory rate of
interest; (b) one hundred million dollars; or (c) ten percent
23 of the defendant's net worth.

24 Provides that the provisions apply to all cases pending on the
effective date of the bill.
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13 agreement entered into by the state and participating
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17 WHEREAS, the action by the State of Florida which was
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24 the same or similar conduct that was the subject of the action
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27 WHEREAS, the State of Florida itself would be at risk
28 in its continued receipt of settlement payments if the ability
29 of participating manufacturers to make the payments were
30 threatened by a requirement that the manufacturers immediately
31 pay massive awards of punitive damages, and

1 WHEREAS, the purpose of punitive damages is the
2 punishment of each wrongdoer by exacting from his or her
3 pocketbook a sum of money which, according to his or her
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6 safeguards to minimize the risk of unjust punishment, and

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9 not financially destroy or bankrupt the defendant or
10 constitute a "grossly excessive" punishment, and

11 WHEREAS, there is no statutorily articulated
12 substantive standard for the courts of this state to apply in
13 order to determine when a punitive-damages judgment is grossly
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15 WHEREAS, a plaintiff's right to punitive damages is
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17 establishment or elimination of such a claim is clearly a
18 substantive, rather than a procedural, decision of the
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20 *Mancusi*, 632 So.2d 1352, 1358 (Fla. 1994), and

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6 executed upon, would financially destroy or bankrupt the
7 defendant.

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

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

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

18 (b) Ten percent of the net worth of the defendant as
19 determined by applying generally accepted accounting
20 principles to the defendant's financial status as of December
21 31 of the year prior to the judgment for punitive damages.

22
23 Provided that in no case shall the amount of the required bond
24 or equivalent surety exceed \$100 million, regardless of the
25 amount of punitive damages.

26 (4) If, at any time after notice and hearing, the
27 court finds that a defendant who has posted a bond or
28 equivalent surety pursuant to subsection (3) is purposefully
29 moving assets with the intent to avoid the punitive-damages
30 judgment, the court shall increase the bond or equivalent
31 surety to the amount determined pursuant to paragraph (3)(a).

1 If the defendant does not post the additional bond required by
2 the court, the stay shall be revoked.

3 Section 2. This act applies to all cases pending on
4 the effective date of this act in which an award for punitive
5 damages has not been finally reduced to judgment through trial
6 and subsequent appeals and to all cases commenced on or after
7 the effective date of this act.

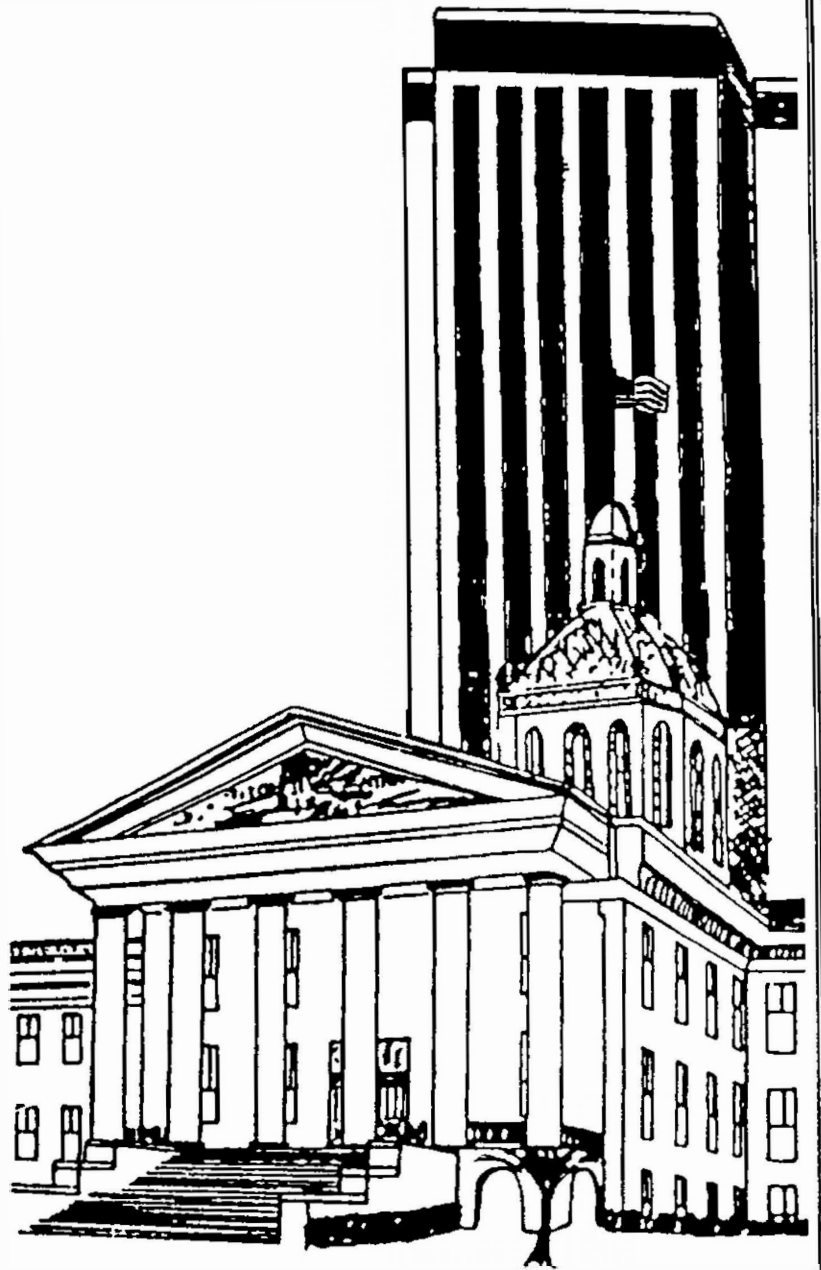
8 Section 3. This act shall take effect upon becoming a
9 law.

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FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

*2000 Regular Session
2000 Special Session “A”*



prepared by:

**LEGISLATIVE INFORMATION SERVICES DIVISION
OFFICE OF LEGISLATIVE SERVICES
Claude Pepper Building, Room 704
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-4371**

HISTORY OF SENATE BILLS

S 1716 (CONTINUED)

- 05/01/00 SENATE Placed on Special Order Calendar—SJ 00629, Read second time—SJ 00727 Amendment(s) adopted—SJ 00727, Ordered engrossed—SJ 00728
- 05/03/00 SENATE Read third time—SJ 00934 CS passed as amended, YEAS 37 NAYS 0—SJ 00934
- 05/03/00 HOUSE In Messages
- 05/05/00 HOUSE Died in Messages

S 1718 GENERAL BILL/CS by Health, Aging and Long-Term Care; Campbell (Identical CS/1ST ENG/H 1953, Similar S 2492, Compare CS/1ST ENG/H 1659)

- Telehealth, requires separate licensure to provide telehealth services to patients in this state, provides that telehealth licensure requirements & responsibilities shall be identical to those provided for full licensure in applicable profession, provides exemption from said licensure for registered nonresident pharmacies & their employees, authorizes bringing of telehealth malpractice actions in this state etc Creates 455 5641, amends 766 102 Effective Date 07/01/2000
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Criminal Justice, Health, Aging and Long-Term Care, Fiscal Policy—SJ 00102
- 03/22/00 SENATE On Committee agenda—Criminal Justice, 03/28/00, 9 00 am, 37—S
- 03/28/00 SENATE Comm Action Favorable with 2 amendment(s) by Criminal Justice, YEAS 6 NAYS 0—SJ 00305
- 03/29/00 SENATE Now in Health, Aging and Long-Term Care—SJ 00305
- 04/12/00 SENATE On Committee agenda—Health, Aging and Long-Term Care, 04/17/00, 3 30 pm, 110—S
- 04/17/00 SENATE Comm Action CS by Health, Aging and Long-Term Care, YEAS 6 NAYS 0—SJ 00486 CS read first time on 04/19/00—SJ 00490
- 04/19/00 SENATE Now in Fiscal Policy—SJ 00486
- 05/05/00 SENATE Died in Committee on Fiscal Policy

S 1720 GENERAL BILL/CS/1ST ENG by Governmental Oversight and Productivity, Latvala (Compare CS/2ND ENG/H 1721)

- Class action Suits/Punitive Damages, prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class-action suits, pending appellate review, provides for application of act to certain pending cases Creates 768 733 Effective Date Upon becoming law
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity—SJ 00102
- 04/20/00 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/25/00, 9 00 am, 37—S
- 04/25/00 SENATE Comm Action—CS by Governmental Oversight and Productivity YEAS 7 NAYS 0—SJ 00522, CS read first time on 04/26/00—SJ 00524
- 04/26/00 SENATE Placed on Calendar—SJ 00522
- 04/28/00 SENATE Placed on Special Order Calendar—SJ 00581, Read second time—SJ 00627 Amendment(s) adopted—SJ 00627, Amendment pending—SJ 00627
- 05/01/00 SENATE Placed on Special Order Calendar—SJ 00628, Pending amendment adopted—SJ 00630, Amendment(s) adopted—SJ 00630, Ordered engrossed—SJ 00630
- 05/02/00 SENATE Read third time—SJ 00811, CS passed as amended, YEAS 37 NAYS 2—SJ 00812
- 05/02/00 HOUSE In Messages
- 05/04/00 SENATE Requested House to return—SJ 01087
- 05/05/00 HOUSE Died in Messages, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 1721 (Ch 2000-128)

S 1722 GENERAL BILL by Latvala

- Economical Operation/State Govt, expresses legislative intent to revise laws in order to promote economical operation of state government Effective Date Upon becoming law
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced referred to Governmental Oversight and Productivity—SJ 00102
- 04/20/00 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/25/00, 9 00 am 37—S—Temporarily postponed
- 04/25/00 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/26/00, 3 30 pm, 37—S—Not considered
- 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity

S 1724 GENERAL BILL by Latvala

- Effective State Government, expresses legislative intent to revise laws in order to promote effective state government Effective Date Upon becoming law
- 02/25/00 SENATE Prefiled

S 1724 (CONTINUED)

- 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity—SJ 00102
- 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity

S 1726 GENERAL BILL by Latvala

- Efficient State Government, expresses legislative intent to revise laws in order to promote efficiency in state government Effective Date Upon becoming law
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Governmental Oversight and Productivity—SJ 00102
- 05/05/00 SENATE Died in Committee on Governmental Oversight and Productivity

S 1728 GENERAL BILL by Campbell

- Florida Motor Vehicle No-Fault Law, repeals various provisions of Fla Motor Vehicle No-Fault Law re short title, purpose, definition, required security, proof of security, personal injury protection benefits, tort exemption, personal injury protection optional limitations & deductions, notification of insured's rights, joinder of claims, & insurer's right of reimbursement Repeals 627 730-7405 Effective Date Upon becoming law
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Banking and Insurance, Transportation—SJ 00102
- 03/08/00 SENATE Withdrawn from Banking and Insurance, Transportation—SJ 00135, Withdrawn from further consideration—SJ 00135

S 1730 GENERAL BILL/CS/CS/1ST ENG by Governmental Oversight and Productivity, Banking and Insurance; Campbell (Similar CS/S 2278, Compare H 0553, CS/CS/CS/2ND ENG/S 1258)

- Deferred Presentments, provides additional grounds for disciplinary action, revises deposit of fees & assessments, adds fee for authorized vendor or branch locations, creates part IV of Money Transmitters' Code, provides registration requirements for deferred presentment transactions, provides procedures for recovering damages for worthless checks, requires maintenance of records for time certain, etc Amends Ch 560 Appropriation \$150,000 Effective Date 10/01/2000 except as otherwise provided
- 02/25/00 SENATE Prefiled
- 03/07/00 SENATE Introduced, referred to Banking and Insurance, Agriculture and Consumer Services, Governmental Oversight and Productivity—SJ 00103
- 03/22/00 SENATE On Committee agenda—Banking and Insurance 03/27/00 1 00 pm 110—S
- 03/27/00 SENATE Comm Action CS by Banking and Insurance, YEAS 10 NAYS 1—SJ 00305, CS read first time on 03/29/00—SJ 00315
- 03/28/00 SENATE Now in Agriculture and Consumer Services—SJ 00305
- 03/30/00 SENATE Withdrawn from Agriculture and Consumer Services Governmental Oversight and Productivity—SJ 00321, Rereferred to Governmental Oversight and Productivity, Agriculture and Consumer Services—SJ 00321
- 04/07/00 SENATE On Committee agenda—Governmental Oversight and Productivity 04/12/00, 10 00 am, 37—S—Temporarily postponed
- 04/12/00 SENATE On Committee agenda—Governmental Oversight and Productivity, 04/17/00, 3 30 pm, 37—S
- 04/17/00 SENATE Comm Action CS/CS by Governmental Oversight and Productivity, YEAS 5 NAYS 0—SJ 00485, CS read first time on 04/19/00—SJ 00490
- 04/19/00 SENATE Now in Agriculture and Consumer Services—SJ 00485
- 04/26/00 SENATE Withdrawn from Agriculture and Consumer Services—SJ 00497, Placed on Calendar
- 05/01/00 SENATE Placed on Special Order Calendar—SJ 00629
- 05/02/00 SENATE Placed on Special Order Calendar—SJ 00729, Read second time—SJ 00734, Amendment(s) adopted—SJ 00734, Ordered engrossed—SJ 00736
- 05/03/00 SENATE Read third time—SJ 00934, CS passed as amended YEAS 39 NAYS 0—SJ 00934
- 05/03/00 HOUSE In Messages
- 05/05/00 HOUSE Died in Messages Iden./Sim./Compare Bill(s) passed refer to CS/CS/CS/SB 1258 (Ch 2000-360)

S 1732 GENERAL BILL/CS by Banking and Insurance, Campbell (Linked CS/CS/S 1598, Similar CS/H 2003, H 2389, Compare H 0903, CS/H 1433, H 1937, S 1128)

- Public Records/Pawnbrokers exempts certain records re pawnbroker transactions which are submitted to FDLE from requirements of public records law provides certain exceptions provides for future review & repeal provides finding of public necessity Effective Date Contingent
- 02/25/00 SENATE Prefiled

HISTORY OF HOUSE BILLS

H 1719 (CONTINUED)

04/26/00 HOUSE Withdrawn from Community Affairs (PRC) -HJ 00775, Placed on Calendar
 04/28/00 HOUSE Placed on Local Calendar Read second and third times -HJ 01072. Passed, YEAS 112 NAYS 0 -HJ 01072
 04/28/00 SENATE In Messages
 05/02/00 SENATE Received, referred to Rules and Calendar -SJ 00892
 05/04/00 SENATE Withdrawn from Rules and Calendar, Placed on Local Calendar -SJ 00994
 05/05/00 SENATE Placed on Local Calendar -SJ 01145, Read second and third times -SJ 01379, Passed, YEAS 39 NAYS 0 -SJ 01379
 05/05/00 HOUSE Ordered enrolled -HJ 02440
 05/26/00 Signed by Officers and presented to Governor
 06/07/00 Approved by Governor, Chapter No 2000-470

H 1721 GENERAL BILL/CS/2ND ENG by Financial Services (CAC); Lacasa, Fasano; (CO-SPONSORS) Byrd, Maygarden; Crow, Bitner; Rubio, Feeney (Compare CS/1ST ENG/S 1720, CS/CS/1ST ENG/S 1998, 1ST ENG/S 2168)

Tobacco Settlement Proceeds, creates Tobacco Settlement Financing Corp authorizes corporation to enter into certain purchase agreements with Banking & Finance Dept for certain purposes, exempts corporation from taxation, provides for additional funding of Lawton Chiles Endowment Fund, prescribes amount of bond or equivalent surety required to stay execution of punitive-damages judgments in class-action suits, etc Creates 215 56005, 768 733, amends 17 41, 215 5601 Appropriation \$5,100,000 Effective Date 05/09/2000
 03/06/00 HOUSE Prefiled
 03/07/00 HOUSE Introduced -HJ 00112
 03/10/00 HOUSE Referred to Financial Services (CAC), Governmental Rules & Regulations (PRC), Finance & Taxation (FRC), General Appropriations (FRC) -HJ 00284
 03/30/00 HOUSE On Committee agenda—Financial Services (CAC), 04/03/00, 3 15 pm 214-C
 04/03/00 HOUSE Comm Action CS by Financial Services (CAC), YEAS 10 NAYS 0 -HJ 00539
 04/12/00 HOUSE CS read first time on 04/12/00 -HJ 00531, Pending review of CS under Rule 113 -HJ 00539
 04/14/00 HOUSE Now in Governmental Rules & Regulations (PRC) -HJ 00539
 04/18/00 HOUSE Withdrawn from Governmental Rules & Regulations (PRC) -HJ 00557 Now in Finance & Taxation (FRC)
 04/25/00 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/26/00, 8 00 am, Morris Hall—Pending reconsideration
 04/26/00 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/26/00, 5 00 pm, Morris Hall, Comm Action Favorable with 12 amendment(s) by Finance & Taxation (FRC), YEAS 14 NAYS 2 -HJ 00835, Now in General Appropriations (FRC) -HJ 00835
 04/27/00 HOUSE Withdrawn from General Appropriations (FRC) -HJ 00888, Placed on Calendar
 04/28/00 HOUSE Placed on Special Order Calendar, Read second time -HJ 01181 Amendment(s) adopted -HJ 01182
 05/03/00 HOUSE Read third time -HJ 01471, CS passed as amended, YEAS 88 NAYS 29 -HJ 01471
 05/03/00 SENATE In Messages, Received, referred to Governmental Oversight and Productivity -SJ 01002 Immediately withdrawn from Governmental Oversight and Productivity -SJ 00987 Substituted for CS/CS/SB 1998 -SJ 00987, Read second time -SJ 00987, Amendment(s) adopted -SJ 00987, Read third time -SJ 00994, CS passed as amended YEAS 39 NAYS 0 -SJ 00994, Conference Committee appointed, Senator Burt, Chair, Horne, Rossin, In the event the House refuses to concur -SJ 00994
 05/03/00 HOUSE In returning messages
 05/04/00 HOUSE Refused to concur -HJ 01533, Conference Committee appointed, Representatives Lacasa, Gay, Gottlieb -HJ 01540
 05/05/00 HOUSE Conference Committee Report received -HJ 02226, Conference Committee Report adopted -HJ 02230, Passed as amended by Conference Committee Report, YEAS 115 NAYS 0 -HJ 02230
 05/05/00 SENATE In returning messages Conference Committee Report received -SJ 01438 Conference Committee Report adopted -SJ 01442 Passed as amended by Conference Committee Report, YEAS 38 NAYS 0 -SJ 01442, Reconsidered -SJ 01442 Passed as amended by Conference Committee Report YEAS 39 NAYS 0 -SJ 01442
 05/05/00 HOUSE Ordered engrossed then enrolled -HJ 02441
 05/09/00 Signed by Officers and presented to Governor Approved by Governor Chapter No 2000-128

H 1723 GENERAL BILL/CS by Judiciary (CJC); Alexander; Benoe, (CO-SPONSORS) Edwards (Similar CS/1ST ENG/S 2368)

Traffic Control, requires issuance of copy of Traffic School Reference Guide with traffic citations, deletes reference to restriction on number of elections person may make to attend basic driver improvement course deletes reference to time period & increases amount of damage required re crash for screening of certain crash reports, provides for mandatory driver improvement courses for certain violations, etc Amends Chs. 318, 322, 316 650 Effective Date 10/01/2000
 03/06/00 HOUSE Prefiled
 03/07/00 HOUSE Introduced -HJ 00112
 03/10/00 HOUSE Referred to Judiciary (CJC), Finance & Taxation (FRC) -HJ 00284
 03/27/00 HOUSE On Committee agenda—Judiciary (CJC) 03/29/00, 1 30 pm, Reed Hall
 03/29/00 HOUSE Comm Action CS by Judiciary (CJC), YEAS 8 NAYS 0 -HJ 00536
 04/12/00 HOUSE CS read first time on 04/12/00 -HJ 00531
 04/07/00 HOUSE Pending review of CS under Rule 113 -HJ 00536 Now in Finance & Taxation (FRC) -HJ 00536
 04/18/00 HOUSE Withdrawn from Finance & Taxation (FRC) -HJ 00557, Placed on calendar, available for General Calendar
 04/24/00 HOUSE Placed on General Calendar, Read second and third times -HJ 00670, CS passed, YEAS 113 NAYS 0 -HJ 00670
 04/24/00 SENATE In Messages
 04/26/00 SENATE Received, referred to Transportation -SJ 00533
 05/05/00 SENATE Withdrawn from Transportation -SJ 01353, Substituted for CS/SB 2368 -SJ 01353, Read second and third times -SJ 01353, CS passed, YEAS 35 NAYS 0 -SJ 01353, Reconsidered -SJ 01356, -SJ 01357 Died on Calendar

H 1725 GENERAL BILL/CS by Transportation & Economic Development Appropriations (FRC), Sublette (Similar CS/CS/S 0392, Compare CS/2ND ENG/S 1194)

Debtors & Creditors, provides for phaseout of sheriff's execution docket, clarifies seizure of property for levy, increases time period to rerecord lien in order to get lien extended for certain time, requires Dept of State to establish database of judgment lien records, revises provisions re designation of homestead by owner before levy provides procedures provides for taking of oath before notary public re exemptions from garnishment, etc Amends FS Effective Date 10/01/2000 except as otherwise provided
 03/06/00 HOUSE Prefiled
 03/07/00 HOUSE Introduced -HJ 00112
 03/10/00 HOUSE Referred to Judiciary (CJC), Transportation & Economic Development Appropriations (FRC) -HJ 00284
 03/27/00 HOUSE On Committee agenda—Judiciary (CJC), 03/29/00, 1 30 pm, Reed Hall—Temporarily deferred
 03/31/00 HOUSE On Committee agenda—Judiciary (CJC), 04/04/00 3 30 pm, Reed Hall
 04/04/00 HOUSE Comm Action Favorable with 1 amendment(s) by Judiciary (CJC), YEAS 9 NAYS 0 -HJ 00503
 04/06/00 HOUSE Now in Transportation & Economic Development Appropriations (FRC) -HJ 00503
 04/14/00 HOUSE On Committee agenda—Transportation & Economic Development Appropriations (FRC) 04/18/00 1 30 pm, 317-C
 04/18/00 HOUSE Comm Action -CS by Transportation & Economic Development Appropriations (FRC), YEAS 10 NAYS 0 -HJ 00771
 04/25/00 HOUSE CS read first time on 04/25/00 -HJ 00768, Pending review of CS under Rule 113 -HJ 00771, Placed on calendar, available for General Calendar -HJ 00771
 04/27/00 HOUSE Placed on Special Order Calendar, Read second time -HJ 00876
 05/02/00 HOUSE Read third time -HJ 01391, CS passed YEAS 115 NAYS 0 -HJ 01391
 05/02/00 SENATE In Messages
 05/03/00 SENATE Received referred to Judiciary Fiscal Policy -SJ 00995
 05/05/00 SENATE Died in Committee on Judiciary Iden /Sim /Compare Bill(s) passed refer to CS/SB 1194 (Ch 2000-258)

H 1727 GENERAL BILL by Jacobs (Identical S 2230)

Nursing Home Facilities/Receivership provides conditions under which AHCA must petition court for appointment of receiver for facility prescribes term of receivership, authorizes agency to adopt rules provides funds for administering receivership from Resident Protection Trust Fund, removes limitation on term of appointment of receiver Amends 400 126 Effective Date 07/01/2000
 03/06/00 HOUSE Prefiled
 03/07/00 HOUSE Introduced -HJ 00113

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Journal of the Senate

Number 24—Regular Session

Friday, May 5, 2000

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[See end of Journal for Bill Action Summary]

CALL TO ORDER

The Senate was called to order by President Jennings at 9 00 a.m. A quorum present—35

Madam President	Diaz-Balart	King	Myers
Bronson	Dyer	Kirkpatrick	Rossin
Brown-Waite	Forman	Klein	Saunders
Burt	Geller	Kurth	Scott
Campbell	Grant	Latvala	Sebesta
Carlton	Hargrett	Laurent	Sullivan
Casas	Holzendorf	Lee	Thomas
Cowin	Horne	McKay	Webster
Dawson	Jones	Mitchell	

Excused Senator Clary

PRAYER

The following prayer was offered by Faye Blanton, Secretary of the Senate:

Dear God, we ask for your continued guidance on this last day of the 2000 Regular Session. We have agreed, we have disagreed, we have laughed, and we have cried, but with your guidance we have done our best for the children, the disabled, the elderly and all the citizens of our state.

We ask your indulgence as we pause to reflect that these Senators, individually and collectively, have brought this Senate into a new decade, a new century and a new millennium. And through it all, we are still proud to be called a collegial body.

It is with special reflection that—through the will of the people of Florida—I now make the last roll call for 11 members of this Senate—Senator Casas, Senator Childers, Senator Diaz-Balart, Senator Grant, Senator Kirkpatrick, Senator Myers, Senator Scott, Senator Hargrett, Senator Kurth, Senator Thomas and our President, Senator Jennings. I also call the name of Senator Forman who has told us he will not return.

Please give special blessings to all these Senators, dear God, because in the words of our late beloved Governor Lawton Chiles, "They didn't come to stay, they came to make a difference." They have all made a difference, dear God, and now they must leave us.

God bless all the citizens of the Great State of Florida. In your name, we pray Amen.

PLEDGE

Senate Pages Lauren MacDonald of Winter Garden and Rhonda Nesbitt of Jacksonville, led the Senate in the pledge of allegiance to the flag of the United States of America.

ADOPTION OF RESOLUTIONS

At the request of Senator Meek—

By Senator Meek—

SR 2438—A resolution recognizing the week of June 10-17, 2000, as the Workers' Right to Organize Week.

WHEREAS, federal law protects employees' rights to form or join a union, and

WHEREAS, unions provide employees with a voice on the job, and

WHEREAS, unions encourage better benefits and greater job security for union workers, and

WHEREAS, unionized employees generally earn more than their non-union counterparts and contribute to the economic vitality of our communities, and

WHEREAS, unions have contributed to the growth of democracy, the well-being of America's working families, and our communities generally, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida

That the week of June 10 through June 17, 2000, is recognized as Workers' Right to Organize Week.

—SR 2438 was introduced, read and adopted by publication.

At the request of Senator King—

By Senator King—

SR 2788—A resolution recognizing June 21-24, 2000, as "U.S. Transplant Games 2000 Days."

WHEREAS, the success of the 2000 U.S. Transplant Games depends largely on the commitment made by the Florida Chapter of the National Kidney Foundation, Florida's organ and tissue procurement organization, the Minority Organ Tissue Transplant Education Program, the Transplant Recipients International Organization, the Marrow Donor Program, and the Florida Coalition on Donation, and

WHEREAS, the National Kidney Foundation is the world's largest organization promoting organ and tissue donation, and the leader in organ donation programs for transplant recipients, donor families, and the professionals who care for them, and

WHEREAS, the State of Florida Organ and Tissue Donor Education Program, the Department of Highway Safety and Motor Vehicles, and the Department of Education are charged by the Legislature to work together to help increase the availability of organ and tissue donors, and

prescribing the amount of bond or equivalent surety required to stay the execution of punitive-damages judgments in class-action suits, pending appellate review, providing for application of the act to certain pending cases, providing for a Task Force on Tobacco-Settlement-Revenue Protection, providing for membership and duties, including reports to the Legislature; providing for staff, providing for expiration of the task force, providing funds to purchase stranded tobacco farming equipment, providing for resale of purchased equipment with restrictions; providing for use of proceeds from resale of equipment; providing appropriations, providing an effective date.

The Conference Committee Report was read and on motion by Senator Burt was adopted. CS for HB 1721 passed as recommended. The vote on passage was:

Yeas—38

Bronson	Diaz-Balart	Kirkpatrick	Rossin
Brown-Waite	Dyer	Klein	Saunders
Burt	Forman	Kurth	Scott
Campbell	Geller	Latvala	Sebesta
Carlton	Grant	Laurent	Silver
Casas	Hargrett	Lee	Sullivan
Childers	Holzendorf	McKay	Thomas
Cowin	Horne	Meek	Webster
Dawson	Jones	Mitchell	
Diaz de la Portilla	King	Myers	

Nays—None

RECONSIDERATION OF CONFERENCE COMMITTEE REPORT

On motion by Senator Burt, the Senate reconsidered the vote by which the Conference Committee Report for CS for HB 1721 was adopted

On motion by Senator Burt, the rules were waived and the Conference Committee Report was adopted CS for HB 1721 passed as recommended and the action of the Senate was certified to the House. The vote on passage was.

Yeas—39

Madam President	Diaz de la Portilla	King	Myers
Bronson	Diaz-Balart	Kirkpatrick	Rossin
Brown-Waite	Dyer	Klein	Saunders
Burt	Forman	Kurth	Scott
Campbell	Geller	Latvala	Sebesta
Carlton	Grant	Laurent	Silver
Casas	Hargrett	Lee	Sullivan
Childers	Holzendorf	McKay	Thomas
Cowin	Horne	Meek	Webster
Dawson	Jones	Mitchell	

Nays—None

STATEMENT OF INTENT

With respect to Section 4 of the bill that deals with the supersedeas bond I want to confirm:

1. That this language is the content of SB 1720, which the Senate passed, as it relates to supersedeas bonds
2. That to the extent they apply, the whereas clauses of SB 1720, which were not included in the conference report, explain the intent of the Legislature in passing this section and
- 3 That this provision is intended to apply to the current Engle case

These bond provisions are limited to certified class action suits and would apply these provisions to all cases pending on the effective date of this act in which the award for punitive damages has not been reduced to judgment

Tom Rossin, 35th District

THE PRESIDENT PRESIDING

SENATOR SILVER PRESIDING

COMMUNICATION

The Honorable John Thrasher
Speaker of the House
House of Representatives
May 2, 2000

Dear Mr Speaker

In compliance with Article III, Section 19(d) of the Constitution and Joint Rule 2, copies of the Conference Committee Reports on HB 2145 and HB 2147 relating to appropriations have been furnished to each member of the Legislature, the Governor, each member of the Cabinet, and the Supreme Court

Delivery was completed May 2, 2000 at 10 05 a m

Respectfully submitted,
John B Phelps, Clerk

The Honorable Tom Jennings, President

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed HB 2145, as amended by the Conference Committee Report.

John B Phelps, Clerk

CONFERENCE COMMITTEE REPORT ON HB 2145

The Honorable Tom Jennings
President of the Senate
May 2, 2000

The Honorable John Thrasher
Speaker, House of Representatives

Dear President Jennings and Speaker Thrasher:

Your Conference Committee on the disagreeing votes of the two houses on the Senate Amendments to HB 2145, same being;

An act making appropriations; providing moneys for the annual period beginning July 1, 2000, and ending June 30, 2001, to pay salaries, and other expenses, capital outlay - buildings, and other improvements, and for other specified purposes of the various agencies of State government, providing an effective date

Having met, and after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows

1. That the Senate recede from its Amendment 1
- 2 That the Senate and the House of Representatives adopt the Conference Committee amendments attached hereto, and by reference made a part of this report

- | | |
|---------------------------------------|---|
| s/ Kenneth P "Ken" Pruitt
Chairman | s/ Lesley "Les" Miller, Jr
Vice Chairman |
| s/ Randy Ball | s/ Allan Bense |
| s/ Rudolph "Rudy" Bradley | s/ Johnnie Byrd |
| s/ Robert K "Bob" Casey | s/ Cynthia Chestnut |
| s/ Lee Constantine | s/ George Crady |
| s/ Victor Crist | s/ Larry Crow |
| s/ Paula Dockery | s/ Josephus Eggelletion |
| s/ Frank Farkas | s/ Tom Feeney |
| s/ James B "Jim" Fuller | s/ Rodolfo (Rudy) Garcia |
| s/ Lars A Hafner | s/ Dennis Jones |
| s/ Bruce Kyle | s/ Carlos A. Lacasa |
| s/ Alfred J "Al" Lawson, Jr | s/ Willie F Logan |
| s/ Evelyn Lynn | s/ Jerry G Melvin |
| s/ Jerry Maygarden | s/ Jefferson B "Jeff" Miller |
| s/ O R "Rick" Minton, Jr | s/ Sandra L "Sandy" Murman |
| s/ Durrell Peadar, Jr | s/ Alzo J Reddick, Sr |
| s/ Beryl Roberts | s/ Debby Sanderson |
| s/ Charles W "Charlie" Sembler II | s/ Kelley R Smith |
| s/ Marjorie R Turnbull | s/ J Alex Villalobos |
| s/ Debbie Wasserman-Schultz | s/ Stephen R Wise |

Managers on the part of the of the House of Representatives

- | | |
|---------------------------|--------------------|
| s/ Locke Burt
Chairman | s/ Daniel Webster |
| | s/ Charlie Bronson |

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1720

SPONSOR: Governmental Oversight and Productivity Committee and Senator Latvala

SUBJECT: Punitive Damages

DATE: April 25, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute codifies current case law which states that punitive damages, while meant to punish a defendant, should not financially destroy or bankrupt a defendant. The bill provides that in any civil action that is brought as a certified class action, the court may not enter a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt the defendant. Further, the committee substitute requires the trial court, in any civil action that is brought as a certified class action, to stay the execution of any judgment, or portion thereof, on account of punitive-damages pending completion of any state appellate review of the judgment if a bond or equivalent surety is posted as provided. The committee substitute provides that the bond must be the lowest of the following: (a) the amount of the punitive damages plus twice the statutory rate of interest (currently 10 percent); (b) \$100 million; or (c) ten percent of the defendant's net worth. If the court finds that the defendant is moving assets to avoid the punitive-damages judgment, the court must increase the bond to the amount of the damages plus twice the statutory rate of interest. The committee substitute also applies these provisions to all cases pending on the effective date of the act in which the award for punitive damages have not been reduced to judgment and to all cases commenced on or after the effective date.

This committee substitute creates s. 768.733, Florida Statutes.

II. Present Situation:

Part II of ch. 768, F.S.,¹ applies to any action for damages, whether in tort or in contract. If a provision of the part is in conflict with any other provision of the *Florida Statutes*, the other provision applies.

¹Sections 768.71-768.81, F.S.

Section 768.72, F.S., provides that in any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure are to be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth can proceed until after the pleading concerning punitive damages is permitted.

Under s. 768.72(2), F.S., a defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct² or gross negligence.³

In the case of an employer, principal, corporation, or other legal entity, s. 768.72(3), F.S., permit imposition of punitive damages for the conduct of an employee or agency only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or
- The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

In all civil actions, the plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The "greater weight of the evidence" burden of proof applies to a determination of the amount of damages.

The statutes currently limit the amount of punitive damages, while also providing exceptions to the limitation. Under s. 768.73, F.S., an award of punitive damages may not exceed the greater of: (a) Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of the section; or (b) the sum of \$500,000.

Where the fact find determines that the wrongful conduct proven under the section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agency, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of: (a) four times the amount of compensatory damages awarded to each claimant

²The term "intentional misconduct" is defined to mean that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage

³The term "gross negligence" is defined to mean that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

entitled thereto, consistent with the remaining provisions of the section; or (b) the sum of \$2 million.

III. Effect of Proposed Changes:

The committee substitute provides that in any civil action that is brought as a certified class action, the court may not enter a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt the defendant.

Further, the committee substitute provides that 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 the section, shall stay the execution of any judgment, or portion thereof, entered on account of punitive-damages pending completion of any state appellate review of the judgment.

The committee substitute establishes the required bond or equivalent surety acceptable to the court for imposition of the state to be the lowest of:

- The amount of the punitive-damages judgment, plus twice the statutory rate of interest;
- \$100 million, regardless of the amount of punitive damages; or
- Ten percent of the net worth of the defendant as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31 of the year prior to the judgment for punitive damages.

If, at any time after notice and hearing, the court finds that a defendant who has posted a bond or equivalent surety pursuant to paragraph (3)(b) or paragraph (3)(c) is purposefully moving assets with the intent to avoid the punitive-damages judgment, the court must increase the bond or equivalent surety to the amount determined pursuant to paragraph (3)(a), which is the amount of the punitive-damages judgment, plus twice the statutory rate of interest. If the defendant does not post the additional bond required by the court, the stay is required to be revoked.

The act specifically applies to all cases pending on the effective date of the act in which an award for punitive damages has not been finally reduced to judgment through trial and subsequent appeals and to all cases commenced on or after the effective date of the act.

The committee substitute is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

While the constitutional authority to create substantive law lies with the legislative branch, the constitutional authority to promulgate court rules of practice and procedure lies with the judicial branch.⁴ The Legislature, however, can repeal an existing court rule of practice or procedure by a 2/3 vote but it can not enact law that amends or supersedes existing court rule. Generally, substantive law prescribes duties and rights.⁵ Procedural law prescribes the means and methods by which a party seeks redress and enforcement of substantive law.⁶ What constitutes practice and procedure versus substantive law has been decided on a case-by-case basis.

The Florida Supreme Court tends to find statutory provisions unconstitutional when delving into procedural law relating to matters such as the timing and sequence of court procedures, the creation of expedited proceedings, court mandates to perform certain functions, attempts to supersede or modify existing court rules or intrusion into the areas of court practice and procedure.⁷ Nonetheless, the courts have shown some willingness to adopt legislatively enacted "procedural" provisions as a court rule, particularly when the court finds the legislative intent or underlying public policy to be beneficial to the judicial system.⁸

In addition, the Court has expressly deferred within a rule to the expertise of the Legislature in implementing several of its rules.⁹ As stated by the Court, although the "[s]eparation of powers is a potent doctrine that is central to our constitutional form of state government . . . this does not mean . . . that two branches of state government in Florida cannot work hand-in-hand in promoting the public good or implementing the public will, as evidenced by

⁴See art. V, s.2(a), Fla. Const. (1978).

⁵See *TGI Friday's Inc. v. Dvorak*, 663 So.2d 606 (Fla. 1995).

⁶*Id*

⁷See e.g., *TGI Friday's Inc. v. Dvorak*, 663 So 2d 606 (Fla. 1995)(relating to offer of judgment statutes in conflict with court rule of procedure on offer of judgment); *Haven Federal Savings & Loan Assoc.* 579 So.2d 730 (Fla 1991)(statute severing counterclaims into separate trials violated court rules); *Markert v. Johnston*, 367 So.2d 1003 (Fla. 1978)(statute prohibiting joinder of liability insurers as defendants invaded court rule-making authority).

⁸See Fla. R. Jud. Admin 2.130(a)(authority to adopt substance of invalid section as an emergency rule of procedure)

⁹See e.g., *Kalway v Singletary*, 708 So 2d 267 (Fla. 1998)(timing for filing complaint seeking extraordinary relief under Florida Rules of Civil Procedure to be determined by law)

our recent decision in *Amendments to the Florida Rules of Appellate Procedure*, 685 So.2d 773 (Fla. 1996) . . .”¹⁰

Substantive Law: Punitive Damages - Based on criteria that substantive law prescribes duties and rights, the courts have found that the provision awarding punitive damages in s. 768.73(1)(a), F.S., relates to substantive law rather than procedural law.¹¹ Therefore, a plaintiff’s right to punitive damages is subject to the discretionary authority of the Legislature to establish or eliminate such right. Further, the right to punitive damages is not a property right which accrues with the cause of action such as the right to compensatory damages and until a judgment is entered awarding punitive damages, the plaintiff does not have a vested right to claim punitive damages.¹²

Bond: Court Rule and Legislative Deference - Based on the general principle that procedural law prescribes the means and methods to apply and enforce substantive rights, the Court has held that the granting of a stay of execution of an order is a step in the enforcement of a final judgment which falls within the definition of procedural law.¹³ However, as an example of the court’s occasional deference to the Legislature as pertains to procedural law, the current Rule 9.310(a), Fla. R. App. P., relating to stays pending review, is markedly different from its precursor, former Rule 5.12(1). Rule 9.310(a), defers in part to the Legislature by stating that “. . . [e]xcept as provided by general law and in section (b) of this rule, a party seeking to stay a final . . . order pending review shall file a motion in the lower tribunal . . .” (*emphasis added*).

A number of current statutes contain provisions for stays in special situations, including but not limited to:

- Section 733.706, F.S., relating to executions and levies in the administration of estates under the Probate Code.¹⁴

¹⁰*Kalway at 269.* (Citing to the deference shown in recently amended appellate rules in limited matters relating to the constitutional right to an appeal). By the same token, the Legislature has deferred or delegated authority to the judiciary to adopt procedural rules for administrative or quasi-judicial tribunals. See e.g., *In re Workmen’s Compensation Rules of Procedure*, 343 So 2d 1273 (Fla. 1977)

¹¹See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994).

¹²See *Gordon v. State*, 608 So. 2d 800 (Fla. 1992).

¹³See *Wait v. Florida Power & Light Co.*, 372 So 2d 420, (Fla. 1979)(former Rule 5.12(1), Fla. R. App. P., relating to stays pending review, overrode statutory provision relating to stays) The former Rule 5.12(1), Fla. R. App. P., relating to stays pending review, automatically stayed the enforcement of a judgment upon a public agency’s filing of a notice of appeal. Under the statute, the filing of a notice of appeal by a public agency did not automatically stay the enforcement of the judgment.

¹⁴Section 733.706, F.S., provides, in pertinent part, that “. . .no execution or other process shall issue on or be levied against property of the estate.” In construing an earlier version of s. 733.706, F.S., an appellate court reversed a trial court’s order requiring an estate’s personal representative to post a money bond while the personal representative pursued an appeal. See also *Donner v. Donner*, 276 So.2d 516 (Fla. 3rd DCA 1973)(an order approving execution or other process to be levied against property of the estate may be entered only in the estate administration proceeding)

- Section 766.311, F.S., relating to review of administrative orders issued in Birth-Related Neurological Injury Compensation Plan proceedings.¹⁵
- Section 766.212, F.S., relating to an arbitration award in a medical malpractice action.¹⁶

The proposed statutory bond provisions are procedural in nature and could be construed as an unconstitutional intrusion on the court's jurisdiction. However, the Court has expressly deferred to the expertise of the Legislature in Rule 9.310, Fla. R. App. P. Thus, the rule allows the Legislature to enact these procedural provisions.

Prospective and Retrospective Effect of a Change in Statutory Law - The distinction between substantive and procedural law is also important for a determination regarding the effect of a statutory change. If a statute is substantive, then the statute is presumed to apply prospectively unless the Legislature expresses its clear intent to have the statute operate retrospectively.¹⁷ The rationale is that retrospective operation of law can act to impair or destroy an existing right. Consequently, any changes to the right to punitive damages under s. 768.73, F.S., relating to the limitation on punitive damages, would apply prospectively unless the Legislature specifically provides that the statute has retroactive application.¹⁸ On the other hand, procedural or remedial statutes, would apply retrospectively and apply to pending cases.¹⁹ Accordingly, any statutory change to the bond requirements in accordance with Rule 9.310, Fla. R.App. P, would apply to all pending cases where an award has not been reduced to judgment.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By prohibiting entry of a judgment for punitive damages against a defendant in an amount that, if fully executed upon, would financially destroy or bankrupt a defendant, the bill would be financially beneficial to defendants who might have punitive damages judgments entered

¹⁵Specifically, subsection (2) of s. 766.311, F.S., provides that "[i]n case of an appeal from an award of the administrative law judge, the appeal shall operate as a suspension of the award, and the association shall not be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined."

¹⁶Section 766.212, F.S, allows an appellate court to stay an arbitration award "to prevent manifest injustice. See *St. Mary's Hosp., Inc. V. Phillipe*, 699 So 2d 1017 (Fla. 4th DCA 1997)(statute authorizing stay of arbitration award to prevent manifest injustice did not infringe on court's exclusive authority to prescribe court rules).

¹⁷See *State v. Lavazzoli*, 434 So 2d 321 (Fla 1983).

¹⁸See *Thayer v. State*, 335 So 2d 815 (Fla 1976).

¹⁹See *City of Lakeland v. Catinella*, 129 So 2d 133 (Fla 1961)

against them. On the other hand, it could detrimentally affect plaintiffs who might receive reduced amounts of punitive damages.

C. Government Sector Impact:

Indeterminate. The bill could protect amounts payable to the State of Florida under the settlement agreement on August 25, 1997, with Phillip Morris, Reynolds Tobacco, B & W American Brands, and Lorillard, as amended.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate

²⁰Florida negotiated a "Most Favored Nations" clause in the settlement which provided the state with additional monies for a period of time after Minnesota settled with the defendants on terms more favorable than Florida's.

STORAGE NAME: h1721s1z.fs
DATE: July 13, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-128, Laws of Florida

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL ANALYSIS

BILL #: CS/HB 1721
RELATING TO: Tobacco settlement proceeds
SPONSOR(S): Committee on Financial Services and Representative Lacasa
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 10 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS (W/D)
- (3) FINANCE & TAXATION YEAS 14 NAYS 2
- (4) GENERAL APPROPRIATIONS (W/D)

I. SUMMARY:

CS/HB 1721 was the number assigned to the comprehensive approach developed by the Legislative Conference Committee appointed to resolve the differences in the House and Senate versions of bills relating to the protection of the tobacco settlement proceeds and the disposition of the resulting funds. Please see Part VI of this analysis for a chronicle of CS/HB 1721 and related Senate bills. Also, please see Part V for related comments.

This bill creates the Tobacco Settlement Finance Corporation, a non-profit, public-benefits corporation, for the purpose of purchasing the state's rights, interest and title to future tobacco settlement payments, subject to the Legislature's approval. The corporation would be governed by a board consisting of the Governor, the Treasurer, the Comptroller and the Attorney General (or designees) and two Senators appointed by the President of the Senate, and two Representatives appointed by the Speaker of the House. After January 7, 2003, the board would include the Chief Financial Officer (or designee), in place of the Treasurer and the Comptroller, as well as the Senate and House appointees. The executive director of the State Board of Administration would serve as the chief executive officer of the corporation.

The bill establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and evaluate methods for protecting the state's settlement revenue from significant loss. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. A non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in equipment, the non-recurring sum of \$2.5 M is appropriated from the Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state. Additionally the University of Florida would receive \$2.5 M from the trust fund to provide on-farm direct assistance to growers in tobacco-producing counties affected by liquidation.

The bill creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

1. **The Tobacco Settlement**

In February, 1995, the State of Florida commenced a legal action against various tobacco manufacturers and other defendants, asserting various claims for monetary and injunctive relief on behalf of the State of Florida. In March 1997, the State settled all of its claims against Liggett Tobacco Company. On August 25, 1997, the State of Florida entered into a settlement agreement with several of the other tobacco companies named in the suit: Phillip Morris, Reynolds Tobacco, B&W American Brands, and Lorillard (the "Big Four"). These settlement agreements settled all claims which were, or could have been, asserted by the State of Florida, including punitive damages. These cigarette producers currently hold a market share of roughly 93 percent in the U.S. The remaining seven percent of market share is shared by various, smaller producers, but they were not named in the state's suit as defendants and were, therefore, not parties to the settlement.

a. **The tobacco settlement - financial obligations**

The settlement documents (as amended)¹ clearly outline the Big Four's financial obligations to the State of Florida. Apart from other first year payments, Florida is to receive 5.5 percent of the following *unadjusted* amounts, in perpetuity:

<u>Year</u>	1999	2000	2001	2002	2003	thereafter
<u>Amount</u>	\$4.5B	\$5B	\$6.5B	\$6.5B	\$8B	\$8B

Currently, tobacco proceeds are placed in the Lawton Chiles Endowment Fund (the "endowment"), which was legislatively created in 1999. The fund is administered by the State Board of Administration. Portions of the non-recurring moneys received pursuant to the settlement are required to be deposited into this fund, and monies will be disbursed to tobacco funds in various departments depending on appropriations made by law. The State Board of Administration invests monies in the endowment in order to maximize rate of return earned by

¹Florida negotiated a "Most Favored Nations" clause in the settlement which provided the state with additional monies for a period of time after Minnesota settled with the defendants on terms more favorable than Florida's.

the state. Section 215.5601, F.S. Funds from the endowment will not be available for disbursement to state agencies until after July 1, 2000.

After Florida's settlement, the Big Four settled lawsuits with Texas, Mississippi, and Minnesota (collectively, estimated to be worth between \$25 billion to \$40 billion over the next 25 years), and they (along with the other producers who hold the other seven percent market share) have settled with the remaining states in what has been termed the "Master Settlement Agreement" or "MSA". The unadjusted cost of the state settlements ranges between \$212 billion to \$246 billion over the next 25 years. The range is rather broad because these amounts are subject to numerous adjustments, from inflation to fluctuations in cigarette consumption and market share. Therefore, the amount may increase due to inflation, but may decrease if cigarette consumption decreases markedly. Other factors that may affect cigarette consumption include general population growth, cigarette price increases, changes in disposable income, youth consumption, health warnings, smoking bans in public places, nicotine dependence, advertising restrictions, and smoking trends over time.²

b. Legal issues and conflicting signals

Notwithstanding the restrictions and covenants negotiated in the various settlements, a sharply divided U.S. Supreme Court ruled March 21, 2000, that the Food and Drug Administration lacks the power to regulate tobacco products. The 5-4 opinion states that the FDA overstepped its authority in 1996, when it issued unprecedented, sweeping regulations involving cigarettes and smokeless tobacco. The tobacco companies anticipate federal legislation introduced in 2001, that would shift jurisdiction for tobacco from Congress to the FDA.

According to information posted on R. J. Reynolds' website, the states will be provided with up to \$246 billion over the next 25 years which can be used to design local solutions to address underage smoking and to enforce the settlement's new rules and restrictions on cigarette marketing.³ The Philip Morris website declares that

"...cigarettes are a legal product that many adults enjoy, notwithstanding the serious health issues surrounding smoking. Although it is appropriate for governments and health authorities to *encourage* people to avoid risky behaviors, we don't believe that they should *prohibit* adults from choosing to smoke. The decision as to whether or not to smoke should be left to individual adults (emphasis theirs)."⁴

Despite the MSA (or perhaps because of it), and other settlements' requirements to educate about the dangers of smoking, tobacco companies are still active in recruiting. According to a Chicago PRNewswire story dated March 24, 2000, Philip Morris recently launched a \$40

²For instance, according to a report prepared by WEFA, Inc., (an international econometrics and consulting firm), on behalf of the Westchester Tobacco Asset Securitization Corporation, dated December 15, 1999, adult consumption of cigarettes declined 0.65% annually for the period 1965 to 1981, 3.31% for the period 1981 to 1990, and 2.47% for the period 1991 to 1998. According to these trends, consumption could decline from the roughly 530 billion cigarettes consumed in 1990, to under 200 billion cigarettes for the year 2040.

³<http://www.rjrt.com/common/pages/IndexDefault.asp>

⁴http://www.philipmorris.com/tobacco_bus/tobacco_issues/index.html

million advertising campaign called "Find your Voice" which portrays smoking as an alluring act of personal choice and is geared specifically towards women whose ethnicity is Latina, African American and Asian American, which reportedly is a largely untapped demographic for smoking.

What the tobacco companies (and the settling state governments) cannot factor in at this time is the estimated cost of dozens of individual suits and one certified class action (*Engle v. R.J. Reynolds, et. al.*, in Dade County, Florida) that are currently pending around the country.⁵ The presiding officers of the Legislature did request an opinion from the Attorney General on whether Florida law requires that compensatory damages be determined before punitive damages may be awarded. A lengthy response was received on March 27, 2000, and is referenced as AGO 00-21. While the tobacco settlement payments are to be made in perpetuity, there is concern by some that the companies may declare bankruptcy and default on their obligations.

c. Viability of the tobacco companies and the threat of bankruptcy

In a story dated March 26, 2000, the Associated Press reported that the National Association of Attorneys General retained a Los Angeles bankruptcy law firm to insure states receive a combined \$246 billion in tobacco settlements. According to the story, the nation's five biggest cigarette makers owe about \$10 billion this year, and also face a potentially record-setting punitive damages award in the *Engle* trial. The tobacco industry fears an estimated 500,000 sick Florida smokers may be awarded as much as \$100 billion or more – the amount being requested by the plaintiffs' counsel.

According to comments by Salomon Smith Barney, tobacco industry credit fundamentals make bankruptcy of a major manufacturer unlikely due to the significant domestic demand for the addictive product, the profitability of the industry, and the ability of the industry to pass additional costs to consumers in the form of higher prices.⁶ In fact, in a series of scenarios presented by WEFA included within the SSB materials projected an industry settlement three times the size of the MSA (approximately \$700 billion) resulting in a cigarette price increase of more than 50 percent causing a consumption decline of more than 14 percent. WEFA concluded that even in those "extreme and unlikely conditions" consumption is still projected to generate sufficient tobacco settlement revenues to meet the planned principal amortization schedule. While it appears that the industry could shoulder a tremendous hit that is amortized and payed out over time, it is unknown how the industry would react to a jury award of as much as \$100 billion or more that was upheld on appeal and immediately payable.

d. Securitization of tobacco settlement proceeds

To hedge against the uncertain continuation of tobacco settlement payments as a result of a vagarious marketplace, ongoing litigation, and potential bankruptcies, New York local governments securitized portions of tobacco settlement proceeds by issuing bonds through non-profit corporations three times, to date, with a fourth offering in the beginning stages. In

⁵For instance, in early 1999, Philip Morris lost a case in California for \$51.5 million (including punitive damages of \$50 million) and a case in Oregon for \$80.3 million (including punitive damages of \$79.5 million). The punitive damages awards in those cases have been reduced to \$26.5 million and \$32 million, respectively, and are on appeal.

⁶Opinions in Tobacco Settlement Securitization, dated February 29, 2000, page 19.

New York, Medicaid payments are split equally between the state and its counties so the Master Settlement divided New York state's settlement "share" between the state and other political subdivisions, and then again according to population and medical reimbursement. New York City had pursued its own lawsuit against the tobacco companies so it, too, was included within the settlement for New York state.

The separate offerings were issued for Nassau County, Westchester County, and New York City. A fourth, for Erie County, is in the beginning stages. For New York City (offering \$709 million) and Nassau County (offering \$295 million), the non-profit corporations were set up according to New York's existing corporation statutes. For Westchester County (offering \$104 million), an existing law authorizing a non-profit corporation and subsidiaries to own and operate the Westchester Medical Center was used as general authority to proceed with bonding.

Committee staff communicated with the transaction counsel for the Westchester County offering⁷ who provided some insight into the time spent (over one year, beginning immediately after the Master Settlement was reached and signed) structuring the bond issue so that it was finally approved with a favorable rating by the bond rating agencies. According to counsel, the offering was structured similarly to a securitization of receivables from credit card accounts or mortgages, and was very successful. Counsel also opined that there is a market for these securities at this time, but the situation could change if more and more political subdivisions securitize their settlement funds, and/or if the tobacco companies take a major "hit" in a pending lawsuit, like *Engle*.

According to Bank of America, a proponent of securitization, other states considering this option include Alabama, Alaska, Colorado, Illinois, Indiana, Louisiana, Maine, New Mexico, Ohio, Oklahoma, South Carolina and Virginia. Salomon Smith Barney, another proponent, reports that the majority of states are interested and/or open to securitization, while Washington, Idaho, Montana, Wyoming, North Dakota, Minnesota, Indiana, Michigan, West Virginia, Maryland, New Hampshire, Maine and Mississippi are not interested.

e. Advantages and disadvantages of securitization

Generally, the advantages of securitization include transferring the risks associated with the receipt of future settlement payments to bond investors, and generating a large, up-front cash payment for a permanent trust fund or for new capital programs.

The disadvantages to securitization include having to discount the stream of future payments, and the implications for the state if there is a default on any bonds. Even though the bonding issues are not backed by the full faith and credit of the state, the bonds are still associated with the state, which creates a policy issue in the event of a default. This may have major implications for Florida because the Governmental Accounting Standards Board (GASB)⁸ requires that bonds of this type offered in the structure proposed by this bill must be reported as a "blended component unit" of the state and as a bond payable in the Annual Financial Report.

⁷Hawkins, Delafield & Wood, New York, New York.

⁸The GASB is a group of private CPAs that standardized bond reporting requirements for states and municipalities, adherence to which provides consistency and comfort to investors.

2. Florida Tobacco Growers and State Divestiture

In 1933, the United States Congress passed the Agricultural Adjustment Act and since 1938, with the exception of one year, farmers in Florida produced tobacco under a federally controlled quota system that regulates the volume of production. There are now approximately 290 tobacco quota holders in the state. Florida tobacco farmers produce flue-cured tobacco which requires a large investment of capital to purchase quota as well as the infrastructure such as land and specialized equipment. Chapter 94-251, L.O.F., amended the "Medicaid Third-Party Liability Act" effectively removing defenses in tortious litigation by the state against tobacco companies. Since the time Florida settled with the Big Four in 1997, there has been a decline in demand for tobacco, and the Florida quota has been reduced 18 percent, 17 percent, and 18.5 percent, in 1998, 1999, and 2000 production years, respectively, dramatically reducing income opportunities for growers.

To ameliorate this hardship, a Phase II National Tobacco Grower's Settlement Trust was established with approximately \$4.3 million being mailed to Florida farmers and quota holders earlier this year, with an additional \$3.7 million expected to be distributed to farmers and quota holders from the United States Department of Agriculture during the 2000 growing season. Under the "Phase II agreement," Florida growers are scheduled to receive a total of \$58.5 million over a 12-year period. However, the Phase II Settlement proceeds are adjusted downward in anticipation of declines in the volume of cigarettes shipped for domestic consumption or in the event of bankruptcy. To date, there are no state programs to purchase *stranded* agricultural equipment from farmers who want to quit growing tobacco in favor of another, market-friendly crop.

On the state level, the College of Agricultural & Life Sciences, a part of the Institute of Food and Agricultural Sciences of the University of Florida (IFAS), is a statewide organization dedicated to teaching, research, and extension and serves the agricultural, human, and natural resources needs for the State of Florida.

Through a program called Florida FIRST, IFAS strives to develop knowledge in agricultural, human, and natural resources through teaching programs (environmental studies, agri-businesses, education, communications, engineering, social sciences, renewable natural resources, and pre-professional and professional programs), research through application of the natural, biological, and social sciences, and IFAS Extension, which provides Floridians with lifelong learning programs in partnership with county governments and the United States Department of Agriculture.

As many U.S. food, fiber, and other agricultural sectors continue to feel impacts of emerging product forms; shifting consumer preferences; heightened environmental, health and safety concerns; and changing lifestyles, alternative crops, value-added products, global competition, new processing technologies, and biotechnology will stimulate change and increase opportunities for growth.

3. Appeal from Civil Judgment - requirement for posting a supersedeas bond

In the case of a civil judgment resulting in an award of solely monetary damages, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Fla.R.App.P. 9.310(b); Fla Jur 2d, Sec. 161. On December 1 of each year beginning December 1, 1994, the Comptroller of the State of Florida shall set the

rate of interest that shall be payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate. Section 55.03, F.S.

C. EFFECT OF PROPOSED CHANGES:

1. The Tobacco Settlement

The corporation would be governed by a board consisting of the Governor, the Treasurer, the Comptroller, and the Attorney General (or designees) and two Senate members appointed by the President of the Senate, and two House members appointed by the Speaker of the House. After January 7, 2003, the board would include the Chief Financial Officer or its designee, in place of the Treasurer and the Comptroller, as well as the Senate and House appointees. The executive director of the State Board of Administration would serve as the chief executive officer of the corporation.

The bill establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and evaluate methods for protecting the state's settlement revenue from significant loss. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. A non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

2. Florida Tobacco Growers and State Divestiture

To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in tobacco agricultural equipment, the non-recurring sum of \$2.5 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state.

In addition, a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund will be directed to the Institute of Food and Agricultural Sciences of the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation. The vast majority of current tobacco farms are located in North/Central Florida area.

3. Appeal from Civil Judgment - requirement for posting a supersedeas bond

The bill creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million. This bond limitation could have an effect in the *Engle* class action, where an estimated 500,000 sick Florida smokers are seeking \$100 billion in punitive damages.⁹ In depositions taken in

⁹Reference Senate Journal page 1442 for Legislative intent.

May, 2000, Philip Morris' tobacco chief reported that his company could not afford to split even half of what Big Tobacco could be forced to shell out in a landmark smokers' case against the industry. Given that testimony, and without the bond limitation, it is unclear whether the tobacco companies could afford to appeal the verdict.

See, Part II.D., SECTION BY SECTION ANALYSIS, for more detail.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 215.5600, F.S., providing definitions. This section also establishes the Tobacco Settlement Finance Corporation, a non-profit, public-benefits entity separate from the state. The purpose of the corporation is to purchase from the state its right, title and interest in and to any or all of the tobacco settlement agreement payments and will sell securities backed by the settlement payments, subject to the Legislature's approval. The proceeds from the bond sale will be used to pay the purchase price for the right to the payments. The total principal amount of bonds issued by the corporation shall not exceed \$3 billion, and the principal amount of bonds issued in any single fiscal year is limited to no more than \$1.5 billion, beginning with the 2001, 2002 fiscal year. The rate of interest on the bonds shall have a true interest cost rate of no more than four percent over the yield on U.S. Treasury obligations which have a maturity approximately equal to the average life of such series of bonds.

The corporation will be governed by a board consisting of the Governor, the Treasurer, the Comptroller, and the Attorney General (or designees), until January 7, 2003, at which time the board will include the Chief Financial Officer or its designee, in place of the Treasurer and the Comptroller. The executive director of the State Board of Administration (SBA) will serve as the chief executive officer of the corporation. The board members cannot be sued for any actions taken by them in the performance of their duties under the act. The corporation may elect, appoint, or employ such officers, agents, or employees as the corporation deems advisable. The officers, agents, or employees may be officers, agents, or employees of the state, as was done for the Inland Protection Financing Corporation (ss 376.3071, 376.3075, F.S.), and the Investment Fraud Restoration Financing Corporation (ss. 517.1203, 517.1204, F.S.).

The corporation will be exempt from state and local taxation, and will not be deemed a special district for purposes of Chapter 189, F.S. (Special Districts), or a unit of government under Part III of Chapter 218, F.S. (Financial Matters Pertaining to Political Subdivisions). Neither the corporation, the purchase agreements entered into by the corporation, nor the bonds issued by the corporation, shall be subject to Chapter 120, F.S. (The Administrative Procedures Act), Part I of Chapter 287, F.S. (Procurement of Commodities, Insurance or Contractual Services), and ss. 215.57 through 215.83, F.S. (The State Bond Act within Chapter 215 - Financial Matters General Provisions). The corporation is authorized to validate any bonds issued pursuant to this act as provided by Chapter 75, F. S. The corporation may contract with the SBA to serve as trustee with respect to bonds issued, invest proceeds, or perform any other duty for the corporation as contracted. The Auditor General is authorized to conduct financial audits of the accounts and records of the corporation. The corporation would be required to use a competitive bidding process consistent with the rules adopted pursuant to the State Bond Act for the selection of service providers and underwriters.

The bonds are not to be construed in any manner as an obligation of the state or any of its agencies. The bonds can only be secured by payments received under the tobacco settlement agreement, and the corporation does not have the power to pledge the credit, the general revenues, or the taxing power of the state or of any political subdivision. The corporation is

prohibited from filing for voluntary bankruptcy until at least one year and one day after which no bonds of the corporation remain outstanding. If, however, the tobacco payments stop for any reason and the bonds go into default the state will not be held accountable to the bondholders. The state does covenant, however, that it will do nothing to impair the creditworthiness of those securities. The bonds that the corporation is authorized to issue are not to exceed a term of 40 years.

The Department of Banking and Finance is authorized, on behalf of the state, to assist the corporation in the execution of its responsibilities, including entering into one or more purchase agreements to sell to the corporation any or all of the state's right, title and interest in and to the tobacco settlement agreement. The department is authorized to covenant to take whatever actions on behalf of the corporation or holders of the bonds to enforce the provisions of the tobacco settlement agreement, and any remedies or rights thereunder. This language, suggested by the Division of Bond Finance, is to help secure a beneficial rate from the bond rating agencies who look favorably on provisions which allow a proxy (in this case the department) to enforce the agreement. The state, although it has sold its rights, still has a compelling interest in the bond residuals to keep the payments forthcoming.

Section 2 amends s. 17.41, F.S., conforming it to the changes in light of section 2, above, and clarifying that monies received by the state pursuant to any *residual* interest retained in the tobacco settlement are to be deposited in the clearing trust fund. However, *proceeds* of the sale of the state's right to tobacco settlement payments are to be deposited directly into the Lawton Chiles Endowment Fund. The administrative requirement that the State Board of Administration serve as cash manager for the clearing fund is removed

Section 3 amends s. 215.5601, F.S., conforming it to the changes in light of section 2, above, and modifies current law appropriations to the endowment fund. The change would require that the \$200 million annually appropriated to the endowment fund during each of the next three fiscal years will be reduced on a dollar-for-dollar basis to the extent that securitization proceeds are deposited in the endowment fund. This essentially replaces the current law appropriation to the endowment with securitization proceeds. This also would assure that if, in FY 2000-2001, a securitization is executed then appropriations for programs from tobacco monies will not be adversely affected.

Section 4 creates s. 768.733, F.S., establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

Section 5 establishes The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and to evaluate methods to protect the state's settlement revenue from significant loss. The options available for protecting the economic and non-economic assets include securitization, insurance, self-insurance, model statute, licensing of manufacturers, or a combination. The task force will consist of the Governor (as Chair), the Comptroller, the Insurance Commissioner, three members of the Senate appointed by the President, and three members of the House of representatives appointed by the Speaker. The task force will submit a recommendation report to the Senate President and Speaker of the House by November 1, 2000. Staff support for the task force will be provided by the State Board of Administration, and the term of the task force will expire on July 1, 2001.

Section 6. For the term of 2000-2001, a non-recurring sum of \$100,000 is appropriated from the General Revenue Fund to the SBA to support the operations of the task force.

Section 7. To assist Florida tobacco farmers in reducing encumbered debt on stranded investment in equipment, the non-recurring sum of \$2.5 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop, to be resold by the Department of Management Services to anyone other than a person or company who produces tobacco in this state or who holds a quota to produce tobacco in this state. Proceeds of the resales, less administrative costs, will be deposited in the General Inspections Trust Fund of the Department of Agriculture and Consumer Services.

Section 8. Provides a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation.

Section 9. Provides this bill will take effect upon becoming a law.

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to Economic & Demographic Research the fiscal impact of this bill is indeterminate and will depend on the amount of the future settlement payments, the size of the bond issue and the structure of the bond securitization.

2. Expenditures:

<u>FY 2000-2001</u>	<u>FY 2001-2002</u>
General Revenue Fund	\$ 100,000
Tobacco Trust Fund	\$5,000,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See, Part III.A.1.and 2., above.

2. Expenditures:

See, Part III.A.1., above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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The impact is indeterminate, and depends on the amount of the future settlement payments, the size of the bond issue and the structure of the bond securitization.

Florida tobacco farmers attempting to change crop production from tobacco to another crop may receive assistance both in the purchase of their tobacco-agricultural equipment through the Department of Agriculture and Consumer Services, and in direct, on-farm assistance through the Institute of Food and Agricultural Sciences of the University of Florida.

D. FISCAL COMMENTS.

N/A

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the total aggregate percentage of a state tax shared with counties and municipalities to below February 1, 1989 levels.

V COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bonds would not be a debt or obligation of the state. If, after the securitization process, the tobacco payments stopped for any reason, the bonds would simply go into default and there would be no recourse against the state by bond holders.

B. RULE-MAKING AUTHORITY:

None is authorized under the bill.

C. OTHER COMMENTS:

During the 2000 legislative Session, the House and Senate considered legislative initiatives to protect the State's tobacco settlement revenues from significant loss and other tobacco-related consequences of the State's tobacco litigation - including the impact on the state's tobacco farmers and quota holders. The Senate appointed a Select Committee on Tobacco to examine the potentially substantial and imminent threats to the settlement proceeds. This Committee held extensive hearings during which a variety of witnesses gave testimony on the array of those threats (including the potential threat posed by the *Engle* case) and the need to address them.

Subsequently, comprehensive tobacco-related legislation was considered to protect the State's settlement proceeds and otherwise further the purposes of the tobacco settlement agreement, including: securitization of the settlement funds (HB 1721); prohibitions on the sale and transportation of "gray market" tobacco products (HB 1941); methods for dealing with the threat to recovery of settlement proceeds created by a potentially large punitive damage award in the *Engle v. R.J. Reynolds, et al.* class action, now pending in Miami (SB 1720); transition programs for tobacco farmers to alternative crops (SB 2446); passage of a tax on tobacco

manufacturers who are not signatories to the State's tobacco settlement (SB 1998); creation of the Task Force on Tobacco-Settlement-Revenue Protection (SB 2168), and funding of the Lawton Chiles Endowment Fund (SJR 1008). (Senate Journal pp. 810-812)

Ultimately, CS/HB 1721 was the number assigned to the comprehensive report developed by the Legislative Conference Committee appointed to resolve the differences in the House and Senate versions of bills relating to the protection of the tobacco settlement proceeds and the disposition of the resulting funds.

Passage of the Conference Committee's Report elicited specific explanations in both the House and the Senate. Section 4 of the bill addresses a potential constitutional defect with present law. Requiring a supersedeas bond in an amount which essentially prohibits a defendant from exercising its rights of appeal could result in a denial of the party's due process rights. If this issue was not legislatively addressed, it could result in the need for extensive litigation in cases such as the *Engle* case. Such litigation could lead to more confusion and uncertainty in regards to the ability of Florida to recover proceeds from the tobacco settlements or to securitize those proceeds. Senator Rossin's comments can be found in the Senate Journal on page 1442. The following statement was read by Representative Les Miller prior to the House vote on the Conference Report and may be found in tape recorded form in the House Clerk's Office.

REPRESENTATIVE L. MILLER: Thank you, Mr. Speaker. I'd like to read something -- a statement into the record before we vote on this bill. I think -- I want to congratulate and commend Representative Lacasa and Representative Gottlieb on the fine work that they've done on this Conference Committee. But, I think we need to read something into this statement -- to make something perfectly clear. With respect to Section 4 of the bill that deals with supersedeas bonds, I want to confirm that the language that includes --the language -- that this language includes the content of Senate Bill 1720 as it relates to supersedeas bonds; that to the extent that this applies, the "Whereas" clause of Senate Bill 1720 which was not included in this Conference Report explains the intent of the Legislature in passing this section; and that the provision is intended to apply to the current *Engle* case.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Disposition of the House Bill

HB 1721 was prefiled by Representative Lacasa on March 6, 2000, and introduced the following day. On March 10, 2000, the bill was referred to the Committees on Financial Services, Governmental Rules & Regulations, Finance & Taxation, and General Appropriations. The Financial Services Committee passed the bill out unanimously as a Committee Substitute on April 3, 2000. The original bill differs from the committee substitute in that the committee substitute version:

- Caps the maximum interest rate for the bonds at 12 percent;
- Replaces a broad exemption of the corporation from Chapter 215, F.S., with a narrowly defined exemption to include the provisions of the State Bond Act only;

- Requires that selection of certain professional service providers be made in a manner consistent with rules of the State Bond Act, through a competitive bidding process;
- Clarifies that the Auditor General may perform audits as deemed appropriate; and
- Authorizes the department to covenant to take whatever actions are necessary on behalf of the corporation or holders of the bonds issued by the corporation to enforce the provisions of the tobacco settlement agreement.

The Bill was withdrawn from the Committee on Governmental Rules & Regulations on April 18, 2000. On April 26, the Committee on Finance & Taxation amended the CS and passed it out by a vote of 10 - 2. These amendments:

- Modify the board of directors of the Tobacco Settlement Financing Corporation to include two members appointed by the President of the Senate, and two members appointed by the Speaker of the House. After the amendment, the board will be composed of four members of the executive branch and four members of the legislature. This will assure that the legislature is involved in decisions related to implementing a securitization.
- Authorize the Corporation to purchase insurance or reinsurance products. This change is meant to allow for the purchase of insurance (if that is desirable) in addition to or as a supplement to the protection afforded by the securitization. This provision does not envision the purchase of insurance directly as an alternative to securitization as contemplated by the Senate's proposal. If the legislature wants to purchase insurance, it can do that directly without having to use the Finance Corporation as the mechanism to purchase insurance.
- Limit the amount of debt that can be issued by the Corporation. This provision is intended to provide assurance to the legislature regarding the amount of the securitization to be implemented. In addition, this amendment replaces the maximum borrowing rate of 12% currently in the bill with a borrowing rate of no more than 4 percent over the yield on U.S. treasury bonds.
- Make technical changes.
- Provide language necessary for rating agency requirements in dealing with bankruptcy preference issues. These changes help the rating analysis and the resulting bond rating.
- Make it explicit that securitization is a sale from a legal standpoint and not security for a borrowing which would be treated differently by the rating agencies. In addition, this amendment corrects a drafting error.
- Modify current law appropriations to the endowment fund. The change would require that the \$200 million annually appropriated to the endowment fund during each of the next three fiscal years will be reduced on a dollar-for-dollar basis to the extent that securitization proceeds are deposited in the endowment fund. This essentially replaces the current law appropriation to the endowment with securitization proceeds. This also would assure that if, in FY 2000-2001, a securitization is executed then appropriations for programs from tobacco monies will not be adversely affected.
- Explicitly state that no contract or other agreement entered into by the corporation, under the authority granted in this act, may be construed to bind or otherwise restrict the legislature.

The bill was withdrawn from the General Appropriations Committee on April 27, 2000. The bill passed the House, as amended, on May 3, 2000, by a vote of 88 - 29. The bill was sent to the Senate, where it was referred to the Committee on Governmental Oversight and Productivity.

On May 3, the Senate reconsidered the vote by which the Senate bill passed, and also voted to withdraw HB 1721 from the Senate Committee on Governmental Oversight and Productivity. The Senate then substituted the House Bill for CS/CS/SB 1998 and laid the Senate bill on the table. The Senate amended the House bill with the provisions of the laid Senate Bill and the provisions of several other tobacco settlement-related Senate bills (CS/SB 1720, SB 2168 & CS/SB 2446) which had passed in sequence with CS/CS/SB 1998 (SJ 811, 812). The amended bill was sent back to the House, which refused to concur on May 4, 2000. A conference committee was appointed. On May 5, 2000, the Conference Committee Report was received and adopted by the House. The amendments:

- Establish The Task Force on Tobacco-Settlement Revenue Protection (the task force) to determine the need for and to evaluate methods to protect the state's settlement revenue from significant loss, and provide an appropriation of \$100,000 from the General Revenue Fund to the SBA to support the operations of the task force
- Appropriate \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase of agricultural equipment used by tobacco farmers or tobacco-producing companies who intend to cease production of that crop;
- Provide a non-recurring appropriation of \$2.5 million from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the University of Florida to provide on-farm direct assistance to growers in the tobacco-producing counties affected by the state's tobacco liquidation; and
- Create a new section in Chapter 768 (s. 768.733, F.S.), establishing that the amount of a bond or other surety required to stay the execution of punitive damages judgments in class-action suits pending appellate review shall be: (1) the amount of the punitive damage award plus twice the statutory rate of interest; or (2) ten percent of the net worth of the defendant prior to the judgement; provided that in no case shall the amount of the bond or other surety exceed \$100 million.

CS/HB 1721 was passed as amended by the Conference Committee Report by a vote of 115 - 0. The Senate received the bill as amended and passed the bill by a vote of 39 - 0.

Disposition of the Senate Bill:

Senate bill 1998 (Home) was introduced on March 7, 2000, and referred to the Committees of Governmental Oversight and Productivity, Health, Aging and Long-term Care, and Fiscal Resource. On April 25, 2000, the Committee on Governmental Oversight and Productivity amended the bill and passed it unanimously as a Committee Substitute. The bill created a cigarette surtax, and provided an opportunity for tobacco manufacturers to be signatories to a specified settlement agreement and be participating manufacturers, thus exempting them from a state surtax on cigarettes not manufactured by a participating manufacturer, as defined by the act.

Among other technical changes, the committee substitute provided that:

- All tobacco manufacturers that are signatories to the settlement agreement entered on August 25, 1997, in the case of *The State of Florida et. al. v. American Tobacco Company, et. al.*, and the settlement agreement entered on March 15, 1996, in the case of *State of West Virginia, State of Florida, State of Mississippi, Commonwealth of Massachusetts, and State of Louisiana v. Brooke Group Ltd. and Liggett Group, Inc.*, are participating manufacturers. Cigarettes produced by each such manufacturer that fully complies with the applicable settlement agreement and makes the annual payment required under the agreement by December 31 are exempt from the surtax on cigarettes imposed under s. 210.02(6) for the subsequent 12-month period.
- Funds received from participating manufacturers will be deposited into the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund.
- The Legislature may not appropriate more than 85 percent of the revenue that is received from participating manufacturers or pursuant to s. 210.02, F.S., in any fiscal year and made available for appropriation in the subsequent fiscal year. Revenue received from participating manufacturers or pursuant to s. 210.02, F.S., in any fiscal year which is not appropriated by the Legislature must be deposited into the Lawton Chiles Endowment Fund.
- For all fiscal years subsequent to fiscal year 2002-2003, a minimum of \$25 million is appropriated from the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to the Lawton Chiles Endowment Fund for Health and Human Services.
- Beginning February 1, 2001, for cigarettes not manufactured by a participating manufacturer as defined in s. 215.5601, F.S., an additional surtax will be added to the amounts otherwise provided in the section. The division is required to calculate the surtax on January 1 of each year, and the surtax must apply on February 1. The per package surtax is calculated in the same manner as the amount that otherwise would be paid directly to the state by a participating manufacturer (per package rate based on the total annual payment due to the state pursuant to the settlement agreement in the case of *The State of Florida et. al. v. American Tobacco Company et. al.*, divided by the total number of packages of cigarettes delivered to wholesale dealers for sale in Florida by the four settling manufacturers during the previous 12 months, rounded to the nearest tenth of a cent).
- The division is to certify to the Comptroller, month to month, the amount derived from the cigarette surtax imposed by s. 210.02(6), F.S., and that amount must be transferred from the Cigarette Tax Collection Trust Fund and credited to the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund.

The bill was withdrawn from the Committee on Health, Aging and Long-term Care on April 26, 2000, and passed out unanimously by the Committee on Fiscal Resource that same day. On April 28, the bill was amended on the Floor of the Senate. The amendment added to the bill the House provision regarding the Tobacco Settlement Financing Corporation. The Senate passed the bill as amended by a vote of 40 - 0, on May 2, 2000.

On May 3, the Senate reconsidered the vote by which the Senate bill passed, and also voted to withdraw HB 1721 from the Senate Committee on Governmental Oversight and Productivity. The Senate then substituted the House Bill for the Senate Bill and laid the

Senate bill on the table. The Senate amended the House bill with the provisions of the Senate Bill that was laid on the table and sent back to the House, which refused to concur on May 4, 2000. A conference committee was appointed. On May 5, 2000, the Conference Committee Report was received and adopted by the House. CS/HB 1721 was passed as amended by the Conference Committee Report by a vote of 115 - 0. The Senate received the bill as amended and passed the bill by a vote of 39 - 0.

VII SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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Michael A. Kliner

Susan F. Cutchins

AS FURTHER REVISED BY THE COMMITTEE ON FINANCE & TAXATION:

Prepared by:

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Kama D.S. Monroe

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