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SENATE BILL NO. 668

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 11, 2004)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend the Code of Virginia by adding a section numbered 8.01-184.1, relating to declaratory judgment to adjudicate constitutional nexus.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-184.1 as follows:

§ 8.01-184.1. Declaratory judgment to adjudicate constitutional nexus.

A. Circuit courts shall have original jurisdiction over civil actions seeking declaratory judgment where:

1. The party seeking declaratory relief is a business that (i) is organized under the laws of the Commonwealth or a sole proprietorship owned by a Commonwealth domiciliary, or (ii) has qualified to do business in the Commonwealth; and

2. The responding party is an official of another state, or political subdivision of another state, who asserts that the business in question is obliged to collect sales or use taxes for such state or political subdivision based upon conduct of the business that occurs wholly or partially within the Commonwealth.

B. Any business meeting the requirements and facing the circumstances described in subsection A shall be entitled to declaratory relief on the issue of whether the requirement of another state, or political subdivision of another state, that the business collect and remit sales or use taxes to that state, or political subdivision, in the factual circumstances of the business' operations giving rise to the demand, constitutes an undue burden on interstate commerce within the meaning of Article I, Section 8, Clause 3 of the United States Constitution. In reaching such a determination, the circuit court shall be guided by the decisions of the courts of the United States construing Article I, Section 8, Clause 3 of the United States Constitution.