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SENATE BILL NO. 675

Offered January 23, 2004

A *BILL to amend the Code of Virginia by adding a section numbered 58.1-1001.1, relating to a fee on cigarettes sold or distributed by nonparticipating manufacturers.*

Patron—Puckett

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 58.1-1001.1 as follows:**

§ 58.1-1001.1. Nonparticipating manufacturer fee.

A. As used in this section:

"Brand family" means the same as that term is defined in § 3.1-336.3.

"Nonparticipating manufacturer" means a tobacco product manufacturer required to place funds in escrow pursuant to subdivision A 2 of § 3.1-336.2.

B. There is hereby imposed, and shall be collected and paid to the Commonwealth, a fee upon each cigarette sold or distributed in the Commonwealth by a nonparticipating manufacturer, regardless of whether or not such cigarette was manufactured by the nonparticipating manufacturer.

The fee shall be imposed at a rate of 15 mills on each such cigarette, and shall be in addition to all other fees and taxes now imposed by law. The Department shall collect the fee each month directly from each nonparticipating manufacturer.

Except as otherwise provided in this section, the fee shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by § 58.1-1001. Beginning with the month of August 2004, nonparticipating manufacturers shall file a monthly return with the Department stating the number of cigarettes sold or distributed by it in the Commonwealth during the preceding month. Payment of the fee imposed by this section shall be included with such monthly return. The return shall be filed with the Department on or before the twentieth day of each month, for the preceding calendar month. The return shall also state for the respective month the number of cigarettes sold or distributed in the Commonwealth by the nonparticipating manufacturer by pack or package by brand family. Nonparticipating manufacturers shall not be required to purchase Virginia revenue stamps from the Department for purposes of paying the fee imposed by this section.

C. Revenues collected from such fee shall be appropriated by the General Assembly (i) to recover health care costs to the Commonwealth imposed by nonparticipating manufacturers; (ii) to provide such additional funding as needed for programs funded in whole or in part by payments to the Commonwealth under the Master Settlement Agreement as such term is defined in § 3.1-336.1; (iii) to fund enforcement and administration of Article 5 (§ 3.1-336.1 et seq.) and Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1, related nonparticipating manufacturer legislation, and the fee imposed by this section; and (iv) for such other purposes as deemed necessary.

D. If a nonparticipating manufacturer does not sell or distribute cigarettes in the Commonwealth as of June 30, 2004, then by the last day of the month immediately prior to the first month in which it sells or distributes any cigarettes in the Commonwealth, the nonparticipating manufacturer shall pay to the Department the fee imposed by this section for the number of cigarettes that it reasonably estimates that it will sell or distribute in the Commonwealth in such first month. Such fee shall equal the greater of (i) 15 mills for each such cigarette reasonably estimated by the nonparticipating manufacturer that will be sold or distributed by it in the Commonwealth in such first month, or (ii) \$50,000. The Department shall establish guidelines for reimbursement to nonparticipating manufacturers if the actual number of cigarettes sold or distributed by it in such first month are less than the number it estimated and guidelines for additional payment by nonparticipating manufacturers if the actual number of cigarettes sold or distributed by it in such first month are greater than the number it estimated.

E. Each person issued a permit from the Department to affix Virginia revenue stamps to cigarettes shall file with the Department a report between the first and tenth of each month, stating the number and denominations of such stamps it affixed to cigarettes that it received from nonparticipating manufacturers, by manufacturer and brand family, which such person sold in the preceding month for each of its places of business in the Commonwealth. This reporting requirement shall be enforced in the same manner as the monthly reporting requirement imposed by § 58.1-1008.

F. The cigarettes of a nonparticipating manufacturer who has not paid the fee imposed by this section shall be treated as cigarettes of a nonparticipating manufacturer who has not provided the certification required by § 3.1-336.4, or any successor legislation. In addition, a person shall not affix

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59 *Virginia revenue stamps required under § 58.1-1003 to any pack or package of cigarettes received from*
60 *a nonparticipating manufacturer after receiving notice from the Department, which the Department shall*
61 *provide, that the nonparticipating manufacturer has not paid in full the fee imposed by this section. Any*
62 *person affixing such stamps in violation of this subsection shall be subject to the penalties provided in*
63 *§ 58.1-1013 for failing to affix stamps.*

64 *G. In addition to the monthly return required herein, the Department may require a nonparticipating*
65 *manufacturer to provide any information reasonably necessary for the Department to determine the fee*
66 *imposed by this section, and any applicable penalty or interest, due from such manufacturer.*

67 **2. That the development of any guidelines by the Department of Taxation for purposes of**
68 **implementation of the provisions of this act, including guidelines for the filing of a monthly return**
69 **by nonparticipating manufacturers with such return to include payment of the fee required**
70 **pursuant to the provisions of this act, shall be exempt from the provisions of the Administrative**
71 **Process Act (§ 2.2-4000 et seq.).**