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**SENATE BILL NO. 74**

Offered January 14, 2004

Prefiled January 5, 2004

*A BILL to amend and reenact §§ 58.1-1001, 58.1-3830, and 58.1-3840 of the Code of Virginia, to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 and 32.1-367, and to repeal § 58.1-3831 of the Code of Virginia, relating to the state and local cigarette taxes.*

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 Patron—Howell
 

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-1001, 58.1-3830, and 58.1-3840 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 and 32.1-367, as follows:**

**CHAPTER 15.****VIRGINIA HEALTH CARE FUND.**

*§ 32.1-366. Virginia Health Care Fund Established.*

*A. There is hereby created in the state treasury a special nonreverting fund to be known as the "Virginia Health Care Fund," hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.*

*B. All revenue received by the Commonwealth pursuant to the provisions of subsection C of § 58.1-1001 shall be paid into the state treasury and deposited to the Fund.*

*§ 32.1-367. Uses of Virginia Health Care Fund.*

*Moneys deposited to the Fund shall be used solely for the provision of health care services. Health care services include, but are not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services. Disbursements from the Fund shall be made in accordance with appropriations made by law.*

*§ 58.1-1001. Tax levied; rate.*

*A. In addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of one and one-quarter mills on each such cigarette sold, stored or received before July 1, 2004; and an excise tax of 3.25 cents on each such cigarette sold, stored or received on and after July 1, 2004.*

*B. 1. The revenues generated by such tax on and after July 1, 2004, in an amount equivalent to two cents on each such cigarette sold, stored or received shall be collected by the Department and deposited into the state treasury to a special nonreverting fund titled the "Local Government School Construction Fund" (the Fund), which is hereby created. Any moneys deposited to or remaining in the Fund at the end each fiscal year shall not revert to the general fund but shall remain in the Fund and shall only be used for the public school purposes provided herein.*

*2. The Department of Education shall administer the moneys in the Fund. Beginning with the fiscal year starting on July 1, 2004, moneys in the Fund shall be distributed to the counties and cities of the Commonwealth on a set per pupil amount, based on the latest actual adjusted average daily membership as described in the general appropriation act and as determined by the Department of Education.*

*3. In any county wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury the proper proportionate amount received by him under subdivision 2 in the ratio that the latest actual adjusted average daily membership of such town bears to the latest actual adjusted average daily membership of such county.*

*4. Moneys in the Fund shall be distributed to counties and cities within 30 days after the end of each calendar quarter beginning with the calendar quarter ending on September 30, 2004. The total amount to be distributed for a calendar quarter shall equal the balance in the Fund at the end of such quarter as determined by the Comptroller. The Department of Education shall certify in writing to the Comptroller the amount to be distributed from the Fund to each county and city. Payments to counties and cities shall be made by check issued by the State Treasurer on warrant of the Comptroller.*

*5. All moneys distributed under this subsection shall be used by counties, cities and towns solely for*

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59 public school construction, public school additions and renovations, including retrofitting and enlarging  
60 public school buildings; public school infrastructure, including technology infrastructure; site acquisition  
61 for public school buildings and public school facilities; or debt service payments on such projects  
62 completed subsequent to December 31, 1993.

63 C. The revenues generated by such tax on and after July 1, 2004, in an amount equivalent to 1.25  
64 cents on each such cigarette sold, stored or received shall be collected by the Department and deposited  
65 into the Virginia Health Care Fund as defined in § 32.1-366.

66 D. The Tax Commissioner shall establish guidelines and rules for the transitional procedures  
67 regarding the imposition of the increased cigarette tax rate under this section. The guidelines and rules  
68 issued by the Tax Commissioner regarding the imposition of the increased cigarette tax rate shall be  
69 exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

70 § 58.1-3830. Local taxes not prohibited; use of dual die or stamp to evidence payment of both  
71 county, city, or town and state tax on cigarettes.

72 A. No provision of Chapter 10 (~~§ 58.1-1000 et seq.~~) of this title shall be construed to deprive  
73 counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such  
74 county, city or town had such power prior to January 1, 1977. All counties, cities and towns shall have  
75 the power to levy taxes upon the sale or use of cigarettes. The governing body of any county, city or  
76 town which levies a cigarette tax and permits the use of meter impressions or stamps to evidence its  
77 payment may authorize an officer of the county, city or town or joint enforcement authority to enter into  
78 an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may  
79 use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax,  
80 and the Department is hereby authorized to enter into such an arrangement. The procedure under such  
81 an arrangement shall be such as may be agreed upon by and between the authorized county, city, town  
82 or joint enforcement authority officer and the Department.

83 B. Any county cigarette tax imposed shall not apply within the limits of any town located in such  
84 county where such town now, or hereafter, imposes a town cigarette tax. However, if the governing  
85 body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall  
86 apply within the limits of such town, then such cigarette tax may be imposed by the county within such  
87 town so long as the sum of the county and town cigarette tax rates does not exceed the maximum local  
88 cigarette tax rate authorized for the town under this article.

89 C. Any cigarette tax imposed by a county, city or town shall be on such terms and in such amounts  
90 as the governing body may by ordinance prescribe, subject to the following limitations:

91 1. From July 1, 2004, through June 30, 2005, the local cigarette tax rate may not exceed one cent  
92 on each cigarette. Any locality imposing the tax at a higher rate prior to December 1, 2003, may  
93 continue to impose the tax at that rate but no higher.

94 2. From July 1, 2005, through June 30, 2006, the local cigarette tax rate may not exceed 1.75 cents  
95 on each cigarette. Any locality imposing the tax at a higher rate prior to December 1, 2003, may  
96 continue to impose the tax at that rate but no higher.

97 3. On and after July 1, 2006, the local cigarette tax rate may not exceed 2.5 cents on each cigarette.  
98 Any locality imposing the tax at a higher rate prior to December 1, 2003, may continue to impose the  
99 tax at that rate but no higher.

100 § 58.1-3840. Certain excise taxes permitted.

101 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any  
102 city or town having general taxing powers established by charter pursuant to or consistent with the  
103 provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals,  
104 meals, and travel campgrounds, provided that no such taxes may be imposed on food and beverages sold  
105 through vending machines or on any tangible personal property purchased with food coupons issued by  
106 the United States Department of Agriculture under the Food Stamp Program or drafts issued through the  
107 Virginia Special Supplemental Food Program for Women, Infants, and Children. In addition, as set forth  
108 in § 51.5-98, no blind person operating a vending stand or other business enterprise under the  
109 jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and  
110 used by the United States for any military or naval purpose shall be required to collect and remit meals  
111 taxes.

112 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this  
113 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
114 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of  
115 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the  
116 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads  
117 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

118 C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions  
119 paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate  
120 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and

121 amphitheatres.

122 2. That § 58.1-3831 is repealed effective July 1, 2004.

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