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SENATE BILL NO. 1332
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Puckett)

(Patron Prior to Substitute—Senator Puckett)

Senate Amendments in [] — February 3, 2005

A Bill to [*amend the of the Code of Virginia by amending and reenacting § 32.1-366 and by amending amend and reenact § 32.1-366 of the Code of Virginia, and to amend*] the Code of Virginia by adding in Chapter 18 of Title 3.1 an article numbered 5.1, consisting of sections numbered 3.1-336.2:1 and 3.1-336.2:2, and to amend the Code of Virginia by adding a section numbered 58.1-439.15:01, relating to assignments of escrow payments under the Master Settlement Agreement and financial incentives for making assignments of escrow payments.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-366 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 18 of Title 3.1 an article numbered 5.1, consisting of sections numbered 3.1-336.2:1 and 3.1-336.2:2, and by amending the Code of Virginia by adding a section numbered 58.1-439.15:01 as follows:

Article 5.1.

Escrow Funds Contributed to the Commonwealth.

§ 3.1-336.2:1. Assignment to the Commonwealth of rights to tobacco manufacturer escrow funds; contribution to the Commonwealth.

Notwithstanding the provisions of subsection B of § 3.1-336.2, a tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision A 2 of § 3.1-336.2 may make an irrevocable assignment of its interest in the funds to the benefit of the Commonwealth. Such assignment shall be permanent and shall apply to all funds in the subject escrow account at the time of assignment or that may subsequently come into such account, including those deposited into the escrow account prior to the assignment being executed, those deposited into the escrow account after the assignment is executed, and interest or other appreciation on such funds. The tobacco product manufacturer, the Attorney General, and the financial institution where the escrow account is maintained shall make such amendments to the qualified escrow account agreement, title to the account, and the account itself as may be necessary to effectuate an irrevocable assignment of rights executed pursuant to this section or a withdrawal of funds from the escrow account pursuant to § 3.1-336.2:2. An assignment of rights executed pursuant to this section shall be in writing, signed by a duly authorized representative of the tobacco product manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the escrow account is maintained.

§ 3.1-336.2:2. Withdrawal of escrow funds assigned and contributed to the Commonwealth.

Notwithstanding the provisions of subsection B of § 3.1-336.2, any escrow funds assigned and paid to the Commonwealth pursuant to § 3.1-336.2:1 may be withdrawn by the Commonwealth upon request of the State Treasurer and approval of the Attorney General. Any funds withdrawn pursuant to this section shall be deposited into the Virginia Health Care Fund established under § 32.1-366 [; provided that, the deposit into the Virginia Health Care Fund shall be the amount of escrow funds withdrawn net of an allocation to the general fund for any required incentive payments under § 58.1-439.15:01 as provided in the appropriation act] . Nothing in this article shall be construed to relieve a tobacco product manufacturer from any past, current, or future obligations it may have pursuant to Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of this chapter.

§ 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 (i) §§ 58.1-1001 and 58.1-1018 and, (ii) Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1, and (iii) § 3.1-336.2:2 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also deposit 40 percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with tobacco product manufacturers, as defined in § 3.1-1106, to the Fund. The Fund shall also consist of all recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that

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would otherwise be deposited to the general fund of the state treasury.

§ 58.1-439.15:01. Tax incentives for use of domestic tobacco.

A. Definitions.

As used in this section, unless the context requires a different meaning:

"Domestic tobacco" means tobacco grown, produced, and processed entirely within the United States of America.

"Master Settlement Agreement" means the same as that term is defined in § 3.1-336.1.

"Small tobacco product manufacturer" means an entity that in the calendar year of making an assignment pursuant to § 3.1-336.2:1 directly (and not exclusively through any affiliate) manufactures fewer than 5 billion cigarettes, whose cigarettes contain a minimum of 75 percent tobacco, who is not participating in the Master Settlement Agreement, who is in compliance with all obligations imposed pursuant to Article 5 (§ 3.1-336.1 et seq.) and Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1, and who has executed an assignment and payment to the Commonwealth in accordance with Article 5.1 (§ 3.1-336.2:1 et seq.) of Chapter 18 of Title 3.1.

B. For taxable years beginning on or after January 1, 2006, any small tobacco product manufacturer who intends to apply for incentive payments pursuant to this section shall, by March 1 of each year, submit to the Department such information as the Department may require to establish: (i) the percentage of domestic tobacco contained in cigarettes produced by such manufacturer; and (ii) the total pounds of domestic tobacco purchased or expected to be purchased by such manufacturer in the current calendar year. At the time purchase of such domestic tobacco is made, the small tobacco product manufacturer making the purchase shall certify to the Department that the sale is occurring and the amount of domestic tobacco being purchased. For all such certifications made by a manufacturer within a calendar year, the Department shall cause incentive payments for which the small tobacco product manufacturer is eligible to be made to the small tobacco product manufacturer. The Tax Commissioner shall, as soon as practicable after the following January 1, but no later than the following January 15, make a written certification to the Comptroller of the amount of the incentive payment to be made to the small tobacco product manufacturer. As soon as practicable after receipt of the Tax Commissioner's certification, but no later than the following February 1, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of the small tobacco product manufacturer.

C. For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the incentive payments shall be \$0.50 per pound of domestic tobacco purchased, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 25 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April 16 immediately preceding the date the incentive payments are made. The amount paid into a qualified escrow account in calendar year 2005 for purposes of the incentive payments shall be computed net of any escrow funds released and reverted back to the small tobacco product manufacturer that are attributable to calendar year 2005 escrow payments, pursuant to subdivision B 2 of § 3.1-366.2 as it was in effect on June 30, 2005.

For taxable years beginning on or after January 1, 2007, but before January 1, 2008, the incentive payments shall be \$0.40 per pound of domestic tobacco purchased in the taxable year, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 20 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April 16 immediately preceding the first day of the taxable year.

For taxable years beginning on or after January 1, 2008, but before January 1, 2009, the incentive payments shall be \$0.30 per pound of domestic tobacco purchased in the taxable year, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 15 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April 16 immediately preceding the first day of the taxable year.

For taxable years beginning on or after January 1, 2009, but before January 1, 2010, the incentive payments shall be \$0.20 per pound of domestic tobacco purchased in the taxable year, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 10 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April 16 immediately preceding the first day of the taxable year.

For taxable years beginning on or after January 1, 2010, but before January 1, 2011, the incentive

122 *payments shall be \$0.10 per pound of domestic tobacco purchased in the taxable year, provided that the*
 123 *aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any*
 124 *such year shall not exceed a total sum equal to 5 percent of the amount that the manufacturer paid for*
 125 *the prior calendar year into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et*
 126 *seq.) of Chapter 18 of Title 3.1 as of the April 16 immediately preceding the first day of the taxable*
 127 *year.*

128 *For taxable years beginning on or after January 1, 2011, there shall be no incentive payments made*
 129 *pursuant to this section.*

130 *[D. A small tobacco product manufacturer shall not be eligible for any incentive payment under this*
 131 *section for domestic tobacco purchased that is grown by an agent or director of the small tobacco*
 132 *product manufacturer and used in the manufacture of cigarettes by the small tobacco product*
 133 *manufacturer.]*

134 **2. That the Department of Taxation shall within 280 days of the passage of this act develop and**
 135 **make publicly available guidelines governing the payments to small tobacco product**
 136 **manufacturers purchasing domestic tobacco. The development of such guidelines shall be exempt**
 137 **from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.**

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