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SENATE BILL NO. 1332

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 14, 2005)

(Patron Prior to Substitute—Senator Puckett)

A BILL to 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 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 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after the assignment is executed, and interest or other appreciation on such funds which have not previously been withdrawn by the tobacco product manufacturer. 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 contributed 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. 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 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.

HOUSE SUBSTITUTE

SB1332H1

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

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

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

64 "Small tobacco product manufacturer" means an entity that in the calendar year of making an
65 assignment pursuant to § 3.1-336.2:1 directly (and not exclusively through any affiliate) manufactures
66 fewer than 5 billion cigarettes, whose cigarettes contain a minimum of 75 percent domestic tobacco,
67 who is not participating in the Master Settlement Agreement, who is in compliance with all obligations
68 imposed pursuant to Article 5 (§ 3.1-336.1 et seq.) and Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of
69 Title 3.1, and who has executed an assignment and payment to the Commonwealth in accordance with
70 Article 5.1 (§ 3.1-336.2:1 et seq.) of Chapter 18 of Title 3.1. A small tobacco product manufacturer
71 shall not be eligible for any incentive payment under this section for domestic tobacco purchased that is
72 grown by an agent or director of the small tobacco product manufacturer and used in the manufacture
73 of cigarettes by the small tobacco product manufacturer.

74 B. For taxable years beginning on or after January 1, 2006, any small tobacco product manufacturer
75 who intends to apply for incentive payments pursuant to this section shall, by March 1 of each year,
76 submit to the Department such information as the Department may require to establish: (i) the
77 percentage of domestic tobacco contained in cigarettes produced by such manufacturer; and (ii) the
78 total pounds of domestic tobacco purchased or expected to be purchased by such manufacturer in the
79 current calendar year. At the time purchase of such domestic tobacco is made, the small tobacco
80 product manufacturer making the purchase shall certify to the Department that the sale is occurring and
81 the amount of domestic tobacco being used in the manufacture of cigarettes which it sells. For all such
82 certifications made by a manufacturer within a calendar year, the Department shall cause incentive
83 payments for which the small tobacco product manufacturer is eligible to be made to the small tobacco
84 product manufacturer. The Tax Commissioner shall, as soon as practicable after the following January
85 1, but no later than the following January 15, make a written certification to the Comptroller of the
86 amount of the incentive payment to be made to the small tobacco product manufacturer. As soon as
87 practicable after receipt of the Tax Commissioner's certification, but no later than the following
88 February 1, the Comptroller shall draw his warrant from funds in the appropriate escrow account
89 pursuant to § 3.1-336.2 on the Treasurer of Virginia in the proper amount in favor of the small tobacco
90 product manufacturer.

91 C. For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the
92 incentive payments shall be the price paid per pound of domestic tobacco used in the manufacture of
93 cigarettes which it sells, provided that the aggregate incentive payments for which a small tobacco
94 product manufacturer may be eligible in any such year shall not exceed a total sum equal to 25 percent
95 of the amount that the manufacturer paid for all prior calendar years net of any escrow funds that are
96 released and reverted back to the small tobacco product manufacturer into a qualified escrow account
97 established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April 16
98 immediately preceding the date the incentive payments are made. The amount paid into a qualified
99 escrow account in calendar year 2005 for purposes of the incentive payments shall be computed net of
100 any escrow funds that are released and reverted back to the small tobacco product manufacturer for the
101 prior calendar year that are attributable to calendar year 2005 escrow payments plus such payments for
102 prior years, pursuant to subdivision B 2 of § 3.1-336.2 as it was in effect on June 30, 2005.

103 For taxable years beginning on or after January 1, 2007, but before January 1, 2008, the incentive
104 payments shall be the price paid per pound of domestic tobacco used in the manufacture of cigarettes
105 which it sells in the taxable year, provided that the aggregate incentive payments for which a small
106 tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 20
107 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow
108 account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April
109 16 immediately preceding the first day of the taxable year.

110 For taxable years beginning on or after January 1, 2008, but before January 1, 2009, the incentive
111 payments shall be the price paid per pound of domestic tobacco used in the manufacture of cigarettes
112 which it sells in the taxable year, provided that the aggregate incentive payments for which a small
113 tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 15
114 percent of the amount that the manufacturer paid for the prior calendar year into a qualified escrow
115 account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1 as of the April
116 16 immediately preceding the first day of the taxable year.

117 For taxable years beginning on or after January 1, 2009, but before January 1, 2010, the incentive
118 payments shall be the price paid per pound of domestic tobacco used in the manufacture of cigarettes
119 which it sells in the taxable year, provided that the aggregate incentive payments for which a small
120 tobacco product manufacturer may be eligible in any such year shall not exceed a total sum equal to 10
121 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 payments shall be the price paid per pound of domestic tobacco used in the manufacture of cigarettes which it sells 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 5 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, 2011, there shall be no incentive payments made pursuant to this section.

D. The provisions of Chapter 18 of this title shall apply to the administration of this section, *mutatis mutandis*.

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