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## SENATE BILL NO. 1332

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on January 26, 2005)

(Patron Prior to Substitute—Senator Puckett)

A BILL to amend and reenact §§ 3.1-1109, 15.2-5510, and 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 §§ 3.1-1109, 15.2-5510, and 32.1-366 of the Code of Virginia are 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. 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.

Any such irrevocable assignment of funds then in the qualified escrow account shall be deemed a contribution to the Commonwealth of such funds for purposes of § 170 of the Internal Revenue Code of 1986 or any successor thereto. Any future funds deposited to such an assigned escrow account shall likewise be deemed a contribution to the Commonwealth.

§ 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.

§ 3.1-1109. Powers and duties of the Commission.

A. The Commission shall have the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at such place or places within ~~this~~ the Commonwealth as it may designate;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;

5. Determine how moneys in the Fund are to be distributed and to authorize grants, loans, or other distributions of moneys in the Fund for the purposes set forth in this chapter;

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. Invest its funds as provided in this chapter or permitted by applicable law; ~~and~~

60 8. *Accept and coordinate actions related to the assignments of escrow payments to the*  
61 *Commonwealth by small tobacco product manufacturers pursuant to § 3.1-336.2:1 and to oversee or*  
62 *assist in the payments made by the Commonwealth to the domestic leaf tobacco farmers who have a*  
63 *contract with the small tobacco product manufacturers who have executed an assignment with the*  
64 *Commonwealth pursuant to § 58.1-439.15:01.*

65 § 9. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably  
66 implied, including use of whatever lawful means may be necessary and appropriate to recover any  
67 payments wrongfully made from the Fund.

68 B. The Commission shall undertake studies and gather information and data in order to determine (i)  
69 the economic consequences of the reduction in or elimination of quota for tobacco growers, (ii) the  
70 potential for alternative cash crops, and (iii) any other matters the Commission believes will affect  
71 tobacco growers in the Commonwealth.

72 C. The Commission shall submit a report annually to the Governor and the General Assembly.

73 § 15.2-5510. Southside Virginia Tourism Development Authority created.

74 A. There is hereby established a Tourism Development Authority for the West Piedmont and the  
75 Southside Planning District Commissions that shall be known as the Southside Virginia Tourism  
76 Development Authority. The Authority shall inventory attractions and events and market, promote,  
77 expand and develop the tourism industries of these tobacco-producing localities as a whole *including but*  
78 *not limited to participating and providing assistance to the payment from the Commonwealth to tobacco*  
79 *farmers who have contracts for the sale of domestic tobacco leaf to small tobacco product*  
80 *manufacturers as provided under § 58.1-439.15:01.*

81 B. On the local level, the governing body of each county and city shall appoint one member to  
82 represent the member's locality on the Southside Virginia Tourism Development Authority.

83 § 32.1-366. Virginia Health Care Fund established.

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

90 B. All revenue received by the Commonwealth pursuant to the provisions of (i) §§ 58.1-1001 and  
91 58.1-1018 ~~and~~, (ii) Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1, *and* (iii)  
92 § 3.1-336.2:2 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also  
93 deposit 40 percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with  
94 tobacco product manufacturers, as defined in § 3.1-1106, to the Fund. The Fund shall also consist of all  
95 recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program  
96 during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that  
97 would otherwise be deposited to the general fund of the state treasury.

98 § 58.1-439.15:01. *Tax incentives for use of domestic tobacco.*

99 A. *Definitions.*

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

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

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

109 *"Tobacco farmer" means a person who is an active tobacco producer within the United States.*

110 B. For taxable years beginning on or after January 1, 2006, small tobacco product manufacturers  
111 who have made the assignment under § 3.1-336.2:1 shall by March 1 of each year submit to the  
112 Department the names of tobacco farmers with whom the small tobacco product manufacturers have  
113 contracts to purchase domestic tobacco leaf, either directly with a tobacco farmer or through a supplier.  
114 At the time purchase of such domestic tobacco leaf is made, the small tobacco product manufacturer  
115 making the purchase shall certify to the Department that the sale is occurring and shall include the  
116 name of the tobacco farmer and the number of pounds of domestic tobacco purchased. Upon receipt of  
117 such certification, the Department shall, as soon as practicable, provide incentive payments for which  
118 the small tobacco product manufacturer making the purchase is otherwise eligible to the tobacco farmer  
119 making the sale. The Tax Commissioner shall make a written certification to the Comptroller of the  
120 amount of the incentive payment to be made to the tobacco farmer making the sale to the small tobacco  
121 product manufacturer. As soon as practicable after receipt of the Tax Commissioner's certification, the

122 Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of the  
123 tobacco farmer.

124 For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the incentive  
125 payments shall be \$0.50 per pound of domestic tobacco purchased in the taxable year, provided that the  
126 aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any  
127 such year shall not exceed a total sum equal to 25 percent of the amount that the manufacturer paid  
128 into a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of  
129 Title 3.1 as of the April 16 immediately preceding the first day of the taxable year.

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

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

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

148 For taxable years beginning on or after January 1, 2010, but before January 1, 2011, the incentive  
149 payments shall be \$0.10 per pound of domestic tobacco purchased in the taxable year, provided that the  
150 aggregate incentive payments for which a small tobacco product manufacturer may be eligible in any  
151 such year shall not exceed a total sum equal to 5 percent of the amount that the manufacturer paid into  
152 a qualified escrow account established pursuant to Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title  
153 3.1 as of the April 16 immediately preceding the first day of the taxable year.

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

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