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HOUSE BILL NO. 160

Offered January 11, 2012

Prefiled January 6, 2012

A BILL to amend and reenact §§ 32.1-366, 58.1-1001, 58.1-1018, 58.1-1021.02, and 58.1-1021.05 of the Code of Virginia, relating to tax rates for cigarettes and other tobacco products.

Patrons—Hope and Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-366, 58.1-1001, 58.1-1018, 58.1-1021.02, and 58.1-1021.05 of the Code of Virginia are amended and reenacted as follows:

§ 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 that is dedicated to the Fund pursuant to the provisions of (i) §§ 58.1-1001 and 58.1-1018, (ii) Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1, and (iii) § 3.2-4203 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 § 3.2-3100, 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.

§ 58.1-1001. Tax levied; rate.

A. Except as provided in subsection B, 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 August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents (\$0.015) on each such cigarette sold, stored or received on and after July 1, 2005, through midnight on June 30, 2012; and an excise tax of 7.25 cents (\$0.0725) on each such cigarette sold, stored, or received on and after July 1, 2012.

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of ~~10%~~ 50 percent of the manufacturer's sales price of such roll-your-own tobacco.

C. ~~The~~ 1. Except as is provided in subdivision 2, revenues generated by the taxes imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

2. The revenues generated by the taxes under this article that are attributable solely to the increase in the tax rate enacted by the 2012 Session of the General Assembly shall be appropriated each fiscal year as follows: (i) four percent to the Virginia Department of Health for the Virginia state tobacco quitline, (ii) four percent to the Virginia Foundation for Healthy Youth to prevent tobacco use, and (iii) the remaining amount to increase the total annual appropriations to localities pursuant to the Personal Property Tax Relief Act in Chapter 35.1 (§ 58.1-3523 et seq.) above the total amount appropriated for the fiscal year ending June 30, 2012.

§ 58.1-1018. Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid.

A. An excise tax is hereby imposed on the storage, use or other consumption in this Commonwealth of cigarettes purchased at retail in an amount equal to that set out in § 58.1-1001. Every person storing, using or otherwise consuming in this Commonwealth cigarettes purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this

59 Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise
60 tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the
61 tax imposed by this article shall not be due.

62 ~~The~~ B. 1. *Except as is provided in subdivision 2, the revenues generated by the tax imposed under*
63 *this section on and after August 1, 2004, shall be collected by the Department and deposited into the*
64 *Virginia Health Care Fund established under § 32.1-366.*

65 2. *The revenues generated by the taxes under this article that are attributable solely to the increase*
66 *in the tax rate enacted by the 2012 Session of the General Assembly shall be appropriated each fiscal*
67 *year as follows: (i) four percent to the Virginia Department of Health for the Virginia state tobacco*
68 *quitline, (ii) four percent to the Virginia Foundation for Healthy Youth to prevent tobacco use, and (iii)*
69 *the remaining amount to increase the total annual appropriations to localities pursuant to the Personal*
70 *Property Tax Relief Act in Chapter 35.1 (§ 58.1-3523 et seq.) above the total amount appropriated for*
71 *the fiscal year ending June 30, 2012.*

72 § 58.1-1021.02. Tax on tobacco products.

73 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the
74 privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in
75 business as a distributor thereof, at the following rates:

76 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
77 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as
78 listed by the manufacturer on the package in accordance with federal law.

79 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
80 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
81 shall be imposed on the distributor for loose leaf tobacco as follows:

82 a. \$0.21 for each loose leaf tobacco single-unit;

83 b. \$0.40 for each loose leaf tobacco half pound-unit;

84 c. \$0.70 for each loose leaf tobacco pound-unit; and

85 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and
86 shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of 4 *four* ounces or portion
87 thereof that the loose leaf tobacco exceeds 16 ounces.

88 The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the
89 provisions of subdivisions a. through d. only and regardless of sales price.

90 3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of ~~40~~ 50 percent of
91 the manufacturer's sales price of such tobacco products.

92 Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the
93 Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or
94 fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or
95 transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the
96 intent and purpose of this article that the distributor who first possesses the tobacco product subject to
97 this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and
98 purpose of this article to impose the tax once, and only once on all tobacco products for sale in the
99 Commonwealth.

100 B. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing
101 power of the Commonwealth under the Commerce Clause of the United States Constitution.

102 C. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith
103 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice
104 shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent
105 determination that such weight information was incorrect.

106 § 58.1-1021.05. Use of revenues.

107 ~~The~~ A. *Except as provided in subsection B, the revenues generated by the taxes imposed under this*
108 *article shall be collected by the Department and deposited into the Virginia Health Care Fund*
109 *established under § 32.1-366.*

110 B. *The revenues generated by the taxes under this article that are attributable solely to the increase*
111 *in the tax rate enacted by the 2012 Session of the General Assembly shall be appropriated each fiscal*
112 *year as follows: (i) four percent to the Virginia Department of Health for the Virginia state tobacco*
113 *quitline, (ii) four percent to the Virginia Foundation for Healthy Youth to prevent tobacco use, and (iii)*
114 *the remaining amount to increase the total annual appropriations to localities pursuant to the Personal*
115 *Property Tax Relief Act in Chapter 35.1 (§ 58.1-3523 et seq.) above the total amount appropriated for*
116 *the fiscal year ending June 30, 2012.*