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SENATE BILL NO. 618

Offered January 20, 2012

A BILL to amend and reenact § 58.1-439.15:01 of the Code of Virginia, relating to incentive payments to certain nonparticipating manufacturers for using domestic tobacco in manufacturing cigarettes.

Patrons—Puckett and Ruff

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-439.15:01 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-439.15:01. Incentive payments 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 § 3.2-4200.

"Small tobacco product manufacturer" means an entity making an assignment pursuant to § 3.2-4202 that directly (and not exclusively through any affiliate) manufactures fewer than 5 billion cigarettes in the calendar year in which the assignment is made, whose manufactured cigarettes contain a minimum of 75 percent domestic tobacco, who is not participating in the Master Settlement Agreement, who is in compliance with all obligations imposed pursuant to Article 1 (§ 3.2-4200 et seq.) and Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, and who has executed an assignment and payment to the Commonwealth in accordance with Article 2 (§ 3.2-4202 et seq.) of Chapter 42 of Title 3.2.

B. Any small tobacco product manufacturer who intends to apply for incentive payments pursuant to this section shall, by January 31 of the applicable year, provide in a written certification 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 amount paid for domestic tobacco purchased by the manufacturer on or after January 1, 2005, which was used by the manufacturer in manufacturing cigarettes in the immediately preceding year. For all such certifications made by an eligible manufacturer that are approved by the Department, the Department shall cause incentive payments to be made to the small tobacco product manufacturer. Incentive payments shall first be made pursuant to this section in calendar year 2007 for calendar year 2006 manufacturing.

The Tax Commissioner shall, as soon as practicable but no later than 30 days after the manufacturer's certification, 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 15 days after receipt of such certification, the Comptroller shall draw his warrant from funds in the appropriate escrow account pursuant to §§ 3.2-4201 and 3.2-4203 on the Treasurer of Virginia in the proper amount in favor of the small tobacco product manufacturer.

C. 1. For incentive payments made in 2007 for calendar year 2006, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing cigarettes in 2006, provided that the aggregate incentive payments for which a small tobacco product manufacturer may be eligible for such purchases shall not exceed a total sum equal to 25 percent of the amount that the manufacturer paid in calendar year 2005 into a qualified escrow account established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2 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 § 3.2-4201 as it was in effect on June 30, 2005. The amount paid into a qualified escrow account in calendar year 2005 shall also include the amount that the small tobacco product manufacturer paid into a qualified escrow account for all calendar years prior to 2005 net of any escrow funds released and reverted back to the manufacturer for such years pursuant to subdivision B 2 of § 3.2-4201 as it was in effect on June 30, 2005.

The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to this subdivision shall not exceed \$9 million. However, if the amount of the incentive payments computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such \$9 million limitation is in excess of \$9 million, the share of the \$9 million to be paid to each qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

2. For incentive payments made in 2008 for calendar year 2007, the incentive payments shall equal the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by

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59 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
60 cigarettes in 2007, provided that the aggregate incentive payments for which a small tobacco product
61 manufacturer may be eligible for such purchases shall not exceed a total sum equal to 20 percent of the
62 amount that the manufacturer paid in calendar year 2006 into a qualified escrow account established
63 pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

64 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
65 this subdivision shall not exceed \$8 million. However, if the amount of the incentive payments
66 computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to
67 such \$8 million limitation is in excess of \$8 million, the share of the \$8 million to be paid to each
68 qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

69 3. For incentive payments made in 2009 for calendar year 2008, the incentive payments shall equal
70 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
71 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
72 cigarettes in 2008, provided that the aggregate incentive payments for which a small tobacco product
73 manufacturer may be eligible for such purchases shall not exceed a total sum equal to 15 percent of the
74 amount that the manufacturer paid in calendar year 2007 into a qualified escrow account established
75 pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

76 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
77 this subdivision shall not exceed \$6 million. However, if the amount of the incentive payments
78 computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to
79 such \$6 million limitation is in excess of \$6 million, the share of the \$6 million to be paid to each
80 qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

81 4. For incentive payments made in 2010 for calendar year 2009, the incentive payments shall equal
82 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
83 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
84 cigarettes in 2009, provided that the aggregate incentive payments for which a small tobacco product
85 manufacturer may be eligible for such purchases shall not exceed a total sum equal to 10 percent of the
86 amount that the manufacturer paid in calendar year 2008 into a qualified escrow account established
87 pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

88 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
89 this subdivision shall not exceed \$4 million. However, if the amount of the incentive payments
90 computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to
91 such \$4 million limitation is in excess of \$4 million, the share of the \$4 million to be paid to each
92 qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

93 5. For incentive payments made in 2011 for calendar year 2010, the incentive payments shall equal
94 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
95 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
96 cigarettes in 2010, provided that the aggregate incentive payments for which a small tobacco product
97 manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of
98 the amount that the manufacturer paid in calendar year 2009 into a qualified escrow account established
99 pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

100 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
101 this subdivision shall not exceed \$3 million. However, if the amount of the incentive payments
102 computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to
103 such \$3 million limitation is in excess of \$3 million, the share of the \$3 million to be paid to each
104 qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

105 6. For incentive payments made in 2012 for calendar year 2011, the incentive payments shall equal
106 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
107 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
108 cigarettes in 2011, provided that the aggregate incentive payments for which a small tobacco product
109 manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of
110 the amount that the manufacturer paid in calendar year 2010 into a qualified escrow account established
111 pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

112 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
113 this subdivision shall not exceed \$3 million. However, if the amount of the incentive payments
114 computed by the Tax Commissioner pursuant to the provisions of this subdivision without regard to
115 such \$3 million limitation is in excess of \$3 million, the share of the \$3 million to be paid to each
116 qualifying small tobacco product manufacturer shall be determined as provided in subsection D.

117 7. For incentive payments made in 2013 for calendar year 2012, the incentive payments shall equal
118 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
119 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
120 cigarettes in 2012, provided that the aggregate incentive payments for which a small tobacco product

121 manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of
122 the amount that the manufacturer paid in calendar year 2011 into a qualified escrow account
123 established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

124 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
125 this subdivision shall not exceed \$3 million. However, if the amount of the incentive payments computed
126 by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such \$3
127 million limitation is in excess of \$3 million, the share of the \$3 million to be paid to each qualifying
128 small tobacco product manufacturer shall be determined as provided in subsection D.

129 8. For incentive payments made in 2014 for calendar year 2013, the incentive payments shall equal
130 the amount paid by the small tobacco product manufacturer for domestic tobacco that was purchased by
131 the manufacturer on or after January 1, 2005, and was used by the manufacturer in manufacturing
132 cigarettes in 2013, provided that the aggregate incentive payments for which a small tobacco product
133 manufacturer may be eligible for such purchases shall not exceed a total sum equal to five percent of
134 the amount that the manufacturer paid in calendar year 2012 into a qualified escrow account
135 established pursuant to Article 1 (§ 3.2-4200 et seq.) of Chapter 42 of Title 3.2.

136 The aggregate amount of incentive payments to all small tobacco product manufacturers pursuant to
137 this subdivision shall not exceed \$3 million. However, if the amount of the incentive payments computed
138 by the Tax Commissioner pursuant to the provisions of this subdivision without regard to such \$3
139 million limitation is in excess of \$3 million, the share of the \$3 million to be paid to each qualifying
140 small tobacco product manufacturer shall be determined as provided in subsection D.

141 7 9. ~~No incentive~~ The making of incentive payments under this section shall be made in calendar
142 years subsequent to 2012 expire on January 1, 2015.

143 D. If the aggregate amount of the incentive payments to all small tobacco product manufacturers to
144 be made in any calendar year exceeds the aggregate limitation for incentive payments for the year, the
145 payment to each qualifying small tobacco product manufacturer for such year shall be a pro rata share
146 of such aggregate limitation based upon the amount of the incentive payment that would have been
147 made to each qualifying manufacturer for such year if there were no such aggregate limitation.

148 E. A small tobacco product manufacturer shall not be eligible for any incentive payment under this
149 section for purchases of domestic tobacco that is grown by an agent or director of the small tobacco
150 product manufacturer.

151 F. The provisions of Chapter 18 (§ 58.1-1800 et seq.) shall apply to the administration of this
152 section, mutatis mutandis.