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**SENATE BILL NO. 1240**

Offered January 21, 1999

*A BILL to amend and reenact § 2.1-1.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 14, consisting of sections numbered 32.1-354 through 32.1-365, relating to the use of funds received by the Commonwealth as a participant in the Master Settlement Agreement with tobacco product manufacturers; creation of the Virginia Tobacco Settlement Fund; establishing the Virginia Tobacco Settlement Foundation.*

Patrons—Ticer, Colgan, Gartlan, Howell and Whipple; Delegates: Almand, Baskerville and Darner

Referred to Committee on Finance

Whereas, the Commonwealth of Virginia elected to participate in the Master Settlement Agreement with participating manufacturers of tobacco products; and

Whereas, pursuant to the Master Settlement Agreement, the Commonwealth is expected to receive substantial payments from the participating manufacturers of tobacco products; and

Whereas, the payments should be dedicated to improving the public health of all residents of the Commonwealth; and

Whereas, under the terms of the Master Settlement Agreement the participating manufacturers of tobacco products will be released from legal liability for a broad range of past, present, and future state health claims, including claims arising from exposure to secondhand smoke; and

Whereas, the Master Settlement Agreement does not provide for the restriction of secondhand smoke; and

Whereas, establishing an independent foundation to administer the payments from the participating manufacturers of tobacco products pursuant to the Master Settlement Agreement will ensure the provision of appropriate public oversight; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.1-1.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 14, consisting of sections numbered 32.1-354 through 32.1-365, as follows:**

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or the enabling legislation of the entities:

**Authorities**

Assistive Technology Loan Fund Authority.  
 Medical College of Virginia Hospitals Authority.  
 Richmond Eye and Ear Hospital Authority.  
 Small Business Financing Authority.  
 Virginia Agriculture Development Authority.  
 Virginia College Building Authority.  
 Virginia Economic Development Partnership.  
 Virginia Housing Development Authority.  
 Virginia Information Providers Network Authority.  
 Virginia Innovative Technology Authority.  
 Virginia Port Authority.  
 Virginia Public Building Authority.  
 Virginia Public School Authority.  
 Virginia Resources Authority.

**Boards**

Board of Commissioners, Virginia Agriculture Development Authority.  
 Board of Commissioners, Virginia Port Authority.  
 Board of Directors, Assistive Technology Loan Fund Authority.  
 Board of Directors, Medical College of Virginia Hospitals Authority.  
 Board of Directors, Richmond Eye and Ear Hospital Authority.  
 Board of Directors, Small Business Financing Authority.  
 Board of Directors, Virginia Economic Development Partnership.  
 Board of Directors, Virginia Innovative Technology Authority.  
 Board of Directors, Virginia Resources Authority.  
 Board of Regents, Gunston Hall Plantation.

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- 60 Board of Regents, James Monroe Memorial Law Office and Library.
- 61 Board of Trustees, Family and Children's Trust Fund.
- 62 Board of Trustees, Frontier Culture Museum of Virginia.
- 63 Board of Trustees, Jamestown-Yorktown Foundation.
- 64 Board of Trustees, Miller School of Albemarle.
- 65 Board of Trustees, Rural Virginia Development Foundation.
- 66 Board of Trustees, The Science Museum of Virginia.
- 67 Board of Trustees, Virginia Museum of Fine Arts.
- 68 Board of Trustees, Virginia Museum of Natural History.
- 69 Board of Trustees, Virginia Outdoor Foundation.
- 70 *Board of Trustees, Virginia Tobacco Settlement Foundation.*
- 71 Board of Visitors, Christopher Newport University.
- 72 Board of Visitors, The College of William and Mary in Virginia.
- 73 Board of Visitors, George Mason University.
- 74 Board of Visitors, Gunston Hall Plantation.
- 75 Board of Visitors, James Madison University.
- 76 Board of Visitors, Longwood College.
- 77 Board of Visitors, Mary Washington College.
- 78 Board of Visitors to Mount Vernon.
- 79 Board of Visitors, Norfolk State University.
- 80 Board of Visitors, Old Dominion University.
- 81 Board of Visitors, Radford University.
- 82 Board of Visitors, University of Virginia.
- 83 Board of Visitors, Virginia Commonwealth University.
- 84 Board of Visitors, Virginia Military Institute.
- 85 Board of Visitors, Virginia Polytechnic Institute and State University.
- 86 Board of Visitors, Virginia State University.
- 87 Commonwealth Health Research Board.
- 88 Governing Board, Virginia College Building Authority.
- 89 Governing Board, Virginia Public School Authority.
- 90 Library Board, The Library of Virginia.
- 91 Motor Vehicle Dealer Board.
- 92 State Board for Community Colleges, Virginia Community College System.
- 93 Virginia-Israel Advisory Board.
- 94 (Effective until July 1, 2002) Wireless E-911 Service Board.
- 95 Commissions
- 96 Advisory Commission on the Virginia Schools for the Deaf and the Blind.
- 97 Alexandria Historical Restoration and Preservation Commission.
- 98 Charitable Gaming Commission.
- 99 Chesapeake Bay Bridge and Tunnel Commission.
- 100 Hampton Roads Sanitation District Commission. Districts
- 101 Chesapeake Bay Bridge and Tunnel District.
- 102 Hampton Roads Sanitation District.
- 103 Educational Institutions
- 104 Christopher Newport University.
- 105 College of William and Mary in Virginia.
- 106 Frontier Culture Museum of Virginia.
- 107 George Mason University.
- 108 James Madison University.
- 109 Jamestown-Yorktown Foundation.
- 110 Longwood College.
- 111 Mary Washington College.
- 112 Miller School of Albemarle.
- 113 Norfolk State University.
- 114 Old Dominion University.
- 115 Radford University.
- 116 The Science Museum of Virginia.
- 117 University of Virginia.
- 118 Virginia Commonwealth University.
- 119 Virginia Community College System.
- 120 Virginia Military Institute.
- 121 Virginia Museum of Fine Arts.

Virginia Polytechnic Institute and State University.  
The Library of Virginia.  
Virginia State University.

#### Foundations

Chippokes Plantation Farm Foundation.  
Rural Virginia Development Foundation.  
Virginia Arts Foundation.  
Virginia Conservation and Recreation Foundation.  
Virginia Historic Preservation Foundation.  
Virginia Outdoor Foundation.  
Virginia Tobacco Settlement Foundation.

#### Museum

Virginia Museum of Natural History. Partnership  
A. L. Philpott Manufacturing Extension Partnership.

#### Plantation

Gunston Hall Plantation.

### CHAPTER 14.

#### VIRGINIA TOBACCO SETTLEMENT FOUNDATION.

##### § 32.1-354. Definitions.

*As used in this chapter, unless the context clearly indicates otherwise:*

"Board" means the Board of Trustees of the Foundation.

"Director" means the director of the Foundation appointed pursuant to § 32.1-358.

"Foundation " means the Virginia Tobacco Settlement Foundation.

"Fund" means the Virginia Tobacco Settlement Fund established pursuant to § 32.1-360.

"Master Settlement Agreement" means the settlement agreement dated November 23, 1998, between the Commonwealth and leading tobacco product manufacturers, including any amendment or successor thereto.

##### § 32.1-355. Virginia Tobacco Settlement Foundation created; purposes.

The Virginia Tobacco Settlement Foundation is hereby created as a body politic and corporate to have such powers and duties as hereinafter provided. The Foundation is established for the purpose of administering the portion of the payments received by the Commonwealth under the Master Settlement Agreement that are earmarked for controlling and preventing the use of tobacco products and to ensure that any public or private entity receiving money under the Master Settlement Agreement establishes and maintains policies supporting reductions in the use of tobacco and in exposure to secondhand smoke.

##### § 32.1-356. Powers of the Foundation.

The Foundation shall have the following general powers:

1. To have succession until dissolved by the General Assembly, in which event title to the properties of the Foundation, both real and personal, shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the Foundation, pass to and become vested in the Commonwealth;

2. To sue and be sued in contractual matters in its own name;

3. To promulgate regulations as it deems necessary for the administration of its functions in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.);

4. To accept, hold, and administer distributions of money under the Master Settlement Agreement and other money, securities, or other property appropriated, given, or bequeathed to the Foundation, absolutely or in trust, for the purposes for which the Foundation is created. The Foundation shall not engage in any business except in the furtherance of its objectives;

5. To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

6. To appoint and prescribe the duties of such officers, agents, and employees as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the Foundation may determine; and

7. To perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

##### § 32.1-357. Board of Trustees; appointment; officers.

A. The Foundation shall be governed and administered by a Board of Trustees consisting of fifteen members. Two members shall be appointed by the Speaker of the House of Delegates from among the membership of the House of Delegates, one representing rural interests and one representing urban interests, for terms concurrent with the term for which they have been elected to office; two members shall be appointed by the Senate Committee on Privileges and Elections, one representing rural interests and one representing urban interests, from among the membership of the Senate for terms concurrent with the term for which they have been elected to office; and eleven other members appointed by the

183 Governor, subject to confirmation by the General Assembly, for four-year terms as follows: (i) five  
184 designated representatives of public health agencies, such as the American Cancer Society, American  
185 Heart Association, American Lung Association of Virginia, Medical Society of Virginia, Virginia  
186 Thoracic Society, and the Virginia Nurses Association; (ii) four health professionals in the fields of  
187 oncology, cardiology, pulmonary medicine, and pediatrics; and (iii) two youths. Vacancies in the  
188 membership of the Board shall be filled by appointment of the entity initially making the appointment  
189 for the unexpired portion of the term. No member shall be eligible to serve for more than two successive  
190 five-year terms; however, after the expiration of a term of four years or less, or after the expiration of  
191 the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be  
192 served by such member if appointed thereto. Immediately after such appointment, the members shall  
193 enter upon the performance of their duties.

194 B. The members shall elect annually a chairman and vice chairman from among the membership.  
195 The chairman, or in his absence, the vice chairman, shall preside at all meetings of the Board. A  
196 majority of the members of the Board serving at any one time shall constitute a quorum for the  
197 transaction of business. The Board shall meet annually or more frequently at the call of the chairman.

198 C. Members of the Board shall receive compensation for their services at the rate provided in  
199 § 2.1-20.3 and shall receive reimbursement for actual expenses incurred in the performance of their  
200 duties on behalf of the Board. Such compensation and expenses shall be paid from the Fund.

201 D. Members of the Board and employees of the Foundation shall be subject to the standards of  
202 conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) and  
203 may be removed from office for inefficiency, neglect of duty or misconduct in the manner set forth  
204 therein.

205 § 32.1-358. Appointment of director.

206 The Foundation shall employ a director, who shall also be the secretary of the Board. The director  
207 shall be appointed by and serve at the pleasure of the Board. The director shall administer, manage and  
208 direct the affairs and business of the Foundation in accordance with the provisions of this chapter,  
209 subject to the policies, control and direction of the Board. The Board may employ technical experts and  
210 such other officers, agents and employees, permanent and temporary, as it may require, and shall  
211 determine their qualifications, duties and compensation. The Board may delegate to one or more of its  
212 agents or employees such administrative duties as it may deem proper. The actual expenses incurred in  
213 the performance of such duties shall be paid from the Fund.

214 § 32.1-359. Duties of the Board.

215 The Board shall perform the following duties:

216 1. Establish specific criteria and procedures governing decisions by the Foundation to distribute the  
217 moneys in the Fund to entities for use in controlling and preventing the use of tobacco and secondhand  
218 smoke;

219 2. Establish requirements that every recipient of money under the Master Settlement Agreement  
220 establish and maintain policies that reduce tobacco use and reduce exposure to secondhand smoke;

221 3. Evaluate the proposals for the use of the assets of the Fund in accordance with the criteria  
222 established by the Board and the provisions of this chapter; and

223 4. Evaluate the implementation and results of all efforts receiving support from the Foundation.

224 § 32.1-360. Virginia Tobacco Settlement Fund.

225 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
226 Tobacco Settlement Fund. The Fund shall be established on the books of the Comptroller. Moneys in the  
227 Fund shall be subject to expenditure by the Foundation without further appropriation. Such portion of  
228 the moneys received under the Master Settlement Agreement as is earmarked for controlling and  
229 preventing the use of tobacco shall be paid into the state treasury and credited to the Fund. The Fund  
230 shall also consist of any moneys appropriated from the general fund, grants and donations received by  
231 the Board, and other moneys received by the State Treasurer and designated for deposit in the Fund.  
232 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
233 remaining the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
234 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
235 controlling and preventing the use of tobacco by residents of the Commonwealth, including but not  
236 limited to educational and awareness programs on the health effects of tobacco use and enforcement of  
237 laws restricting the distribution of tobacco products to minors. Expenditures and disbursements from the  
238 Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request  
239 signed by the chairman of the Board or the director.

240 § 32.1-361. Use of funds distributed under Master Settlement Agreement.

241 Notwithstanding any other provision of law to the contrary, any public or private entity utilizing any  
242 moneys received by the Commonwealth pursuant to the Master Settlement Agreement shall be required,  
243 as a condition precedent to the release of such funds to such entity, to establish and maintain policies to  
244 support the reduction of tobacco use and reduce exposure to secondhand smoke. The Foundation shall

(i) establish criteria for determining whether an entity's policies support the reduction of tobacco use and reduce exposure to secondhand smoke and (ii) monitor the distribution of such moneys to ensure that the recipients of such funds are in compliance with the provisions of this section.

§ 32.1-362. Audit.

The accounts of the Foundation shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 32.1-363. Forms of accounts and records.

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

§ 32.1-364. Reports to the Governor and General Assembly.

The Foundation shall submit a report annually to the Governor and the General Assembly. The report shall include information regarding research efforts supported by the Foundation and expenditures from the Fund.

§ 32.1-365. Public purpose.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, knowledge, convenience and prosperity.