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**SENATE BILL NO. 60**

Offered January 11, 2006

Prefiled January 3, 2006

*A BILL to amend and reenact §§ 58.1-625 and 58.1-626 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-611.2, relating to a limited sales and use tax exemption for school-related items.*

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 Patron—Reynolds
 

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 Referred to Committee on Finance
 

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

**1. That §§ 58.1-625 and 58.1-626 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-611.2 as follows:**

*§ 58.1-611.2. Limited exemption for certain school-related items.*

*A. For purposes of this section:*

*"Eligible county or city" means a county or city contiguous to another state (including the District of Columbia), provided that (i) the laws of such other state authorize a sales tax holiday and (ii) the county or city has a high unemployment rate. Any county or city with a high unemployment rate contiguous to any such county or city shall also be an eligible county or city.*

*"High unemployment rate" means that the county's or city's 10-year average annual unemployment rate is greater than 5%. Such 10-year average shall be computed using the county's or city's annual unemployment rate for the most recent 10 years as determined by the Virginia Employment Commission.*

*"Participating county or city" means an eligible county or city that has in effect a local ordinance providing for the sales tax holiday described in subsection B.*

*"Sales tax holiday" means a limited period of time during the calendar year in which the sales and use tax is not imposed on clothing or school supplies.*

*B. The local governing body of each eligible county or city may by a majority vote of its elected members adopt an ordinance providing that its local sales and use tax shall not apply to clothing and school supplies that are sold or purchased during a seven-day period in each year that begins on the Monday 14 days before the first Monday in September and ends at midnight on the following Sunday. Such ordinance shall limit the tax exemption to such articles having a selling price of \$100 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption. The exemptions provided by this section shall not apply to (i) rentals, (ii) an item for use in a trade or business, or (iii) any purchase made in a theme park.*

*The authority granted herein to an eligible county or city shall expire on the September 30 immediately following such time that the laws of such other state (including the District of Columbia) cease to authorize a sales tax holiday, and any such local ordinance adopted by an affected county or city shall no longer be valid.*

*C. During the time period described in subsection B, the tax imposed by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 shall not apply in participating counties or cities to the sale or purchase of the items of tangible personal property described in such subsection.*

*D. The Department shall develop guidelines that describe the items of merchandise that qualify for the sales and use tax exemption as provided under this section and shall make such guidelines available, both electronically and in hard copy, no later than August 1 of each year.*

**§ 58.1-625. Collection of tax.**

The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can

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59 affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

60 Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution,  
61 lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for  
62 and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this  
63 Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid.  
64 Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by  
65 himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

66 All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the  
67 Commonwealth.

68 *Notwithstanding the foregoing provisions of this section, any dealer located in a participating county*  
69 *or city as defined in § 58.1-611.2 is authorized during the period of time set forth in such section not to*  
70 *collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606*  
71 *from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be*  
72 *liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected*  
73 *from a purchaser pursuant to this section.*

74 § 58.1-626. Absorption of tax prohibited.

75 No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or  
76 any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment  
77 of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2  
78 misdemeanor. *The prohibitions contained in this section shall not apply to dealers located in a*  
79 *participating county or city as defined in § 58.1-611.2 during the time period set out in such section or*  
80 *during the 14 days immediately preceding such time period for advertisements relating to sales to be*  
81 *made during the time period set out in § 58.1-611.2.*