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SENATE BILL NO. 701

Offered January 22, 2010

A *BILL to amend the Code of Virginia by adding in Chapter 10 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-1023 through 58.1-1030.1, relating to a cigarette equity fee assessment.*

Patron—Marsden

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:1. That the Code of Virginia is amended by adding in Chapter 10 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-1023 through 58.1-1030.1, as follows:

*Article 3.1.**Equity Fee Assessment.**§ 58.1-1023. Definitions.*

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Cigarette" means "cigarette" as that term is defined in § 58.1-1000.

"Department" means the Virginia Department of Taxation.

"Nonparticipating manufacturer" means (i) a manufacturer of cigarettes that is not a "participating manufacturer" as that term is defined in the Master Settlement Agreement as that term is defined in § 3.2-4200, or (ii) the first purchaser in the United States of cigarettes manufactured outside the United States for resale in the United States.

§ 58.1-1024. Equity Assessment.

A. In addition to all other fees and taxes, an equity assessment in the amount of \$0.0225 is imposed upon each cigarette sold or transferred by a nonparticipating manufacturer in the Commonwealth.

B. 1. On or before September 1, 2010 each nonparticipating manufacturer selling cigarettes in the Commonwealth shall prepay to the Department the equity assessment for all cigarettes that are anticipated to be sold from July 1, 2010 through December 31, 2010. The prepayment amount shall be the greater of (i) two and one-fourth cents (\$0.0225) multiplied by the number of cigarettes that the Department reasonably estimates that the nonparticipating manufacturer will sell in the Commonwealth in such time period, or (ii) \$5,000. The Department shall notify each nonparticipating manufacturer by August 1, 2010 of the amount of prepayment due.

2. In calendar year 2011 and each year thereafter, each nonparticipating manufacturer selling cigarettes in the Commonwealth shall, on or before March 1, prepay to the Department the equity assessment for all cigarettes that are anticipated to be sold in that same calendar year. The prepayment amount shall be the greater of (i) two and one-fourth cents (\$0.0225) multiplied by the number of cigarettes that the Department reasonably estimates that the nonparticipating manufacturer will sell in the Commonwealth in the current calendar year or (ii) \$10,000.00. The Department shall notify each nonparticipating manufacturer by February 15 of the amount of prepayment due that year. The Department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sales of cigarettes.

3. On or before April 15 following the year in which a nonparticipating manufacturer prepaid an equity assessment, or should have prepaid such assessment, the Department shall collect from each nonparticipating manufacturer any equity assessment due from the preceding year, and shall refund any overpayment of such.

4. The Department may require a nonparticipating manufacturer to provide any information reasonably necessary for the Department to estimate the equity assessment prepayment amount, and the April 15 reconciliation of such.

§ 58.1-1025. Stamps.

A stamping agent, as defined in § 3.2-4204, shall not affix a stamp to any package of cigarettes of a nonparticipating manufacturer, (i) if the nonparticipating manufacturer is not listed on the Department's website as provided in § 58.1-1028 or (ii) if the stamping agent has information from the Department that the nonparticipating manufacturer has not fully paid all fees due pursuant to this article. A stamping agent that violates this section shall be subject to the penalties set forth in subdivision B 2 of § 58.1-1027.

§ 58.1-1026. Sale of cigarettes by nonparticipating manufacturer; information to be provided to Department.

No nonparticipating manufacturer shall sell cigarettes in the Commonwealth, for delivery in the

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59 Commonwealth, or for consumption in the Commonwealth, unless it has provided to the Department on
60 a form prescribed by the Department the following information:

61 1. The complete name, address, and telephone number of the nonparticipating manufacturer.

62 2. The date that the nonparticipating manufacturer intends to begin or began selling cigarettes in the
63 Commonwealth.

64 3. The brand names of the cigarettes the nonparticipating manufacturer will sell or is selling in the
65 Commonwealth.

66 4. A statement of the nonparticipating manufacturer's intention to comply with its escrow obligation
67 under subdivision A 2 of § 3.2-4301 and the obligations in this article, and any rule or regulation
68 adopted pursuant thereto.

69 5. The name, address, and telephone number of the resident agent of the nonparticipating
70 manufacturer.

71 6. The name, address, telephone number, and signature of an officer of the nonparticipating
72 manufacturer attesting to all of the information described in this section.

73 7. Any other information required by the Department.

74 § 58.1-1027. Prohibited conduct; penalties.

75 A. If a nonparticipating manufacturer fails to provide the information required under § 58.1-1026, or
76 pay the equity assessment required by this article, it shall not sell cigarettes in the Commonwealth, for
77 delivery in the Commonwealth, or for consumption in the Commonwealth.

78 No person or entity in the Commonwealth shall purchase or acquire and (i) sell, or (ii) have the
79 intent to resell, any cigarettes from, or manufactured by, any nonparticipating manufacturer that has not
80 provided the information required under § 58.1-1026 or made the payment of the equity assessment
81 required by this article.

82 B. In addition to all other penalties provided under this article or any other law, the Department
83 may impose a civil penalty as follows:

84 1. For failure to make the payments required by § 58.1-1024, a nonparticipating manufacturer shall
85 be assessed a penalty in an amount not to exceed five percent of the amount due and owing for each
86 day such amount is delinquent, in a total amount not to exceed the total of the original amount that was
87 owed;

88 2. For all other violations of this article, a nonparticipating manufacturer will be fined in an amount
89 not to exceed \$10,000 per violation.

90 § 58.1-1028. Publication of list of compliant nonparticipating manufacturers.

91 The Department shall maintain and regularly update a list of nonparticipating manufacturers that
92 have complied with the requirements of this article. The Department shall publish the list on its website
93 and provide a copy of the list to any person or entity upon request.

94 § 58.1-1029. Service of process.

95 A nonparticipating manufacturer shall appoint and continually engage a resident agent for service of
96 process. That service shall constitute legal and valid service of process on the nonparticipating
97 manufacturer.

98 § 58.1-1030. Brand previously sold.

99 Any nonparticipating manufacturer that sells or intends to sell a brand of cigarettes in the
100 Commonwealth, or for delivery or consumption in the Commonwealth, when that brand had previously
101 been sold in the Commonwealth, or for delivery or consumption in the Commonwealth, is presumed to
102 be the same manufacturer that previously sold that same brand in the Commonwealth or that was
103 delivered in the Commonwealth, unless the nonparticipating manufacturer can prove that the previous
104 sales of the brand were made by a different manufacturer with which it is not affiliated.

105 § 58.1-1030.1. Audit or review.

106 The Department shall periodically conduct an audit or review of nonparticipating manufacturers to
107 ensure compliance with this article.