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## HOUSE BILL NO. 1815

Offered January 12, 2011

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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, Englin and Ebbin

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 pursuant to the provisions of (i) §§ subdivision C 1 of § 58.1-1001 and subdivision B 1 of § 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 on each such cigarette sold, stored or received on and after July 1, 2005, through midnight on June 30, 2011; and an excise tax of 7.25 cents on each such cigarette sold, stored or received on and after July 1, 2011.

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 for the revenue described 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 under this section that are attributable solely to the increase in the tax rate enacted by the 2011 Session of the General Assembly shall be appropriated as follows: 52 percent of the revenue for Medicaid waivers for intellectual disabilities pursuant to Chapter 303 of the Acts of Assembly of 2009, 40 percent for Medicaid reimbursement to hospitals and doctors, four percent to the Virginia Department of Health for the Virginia state tobacco quitline, and four percent to the Virginia Healthy Youth Foundation to prevent tobacco use.

§ 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 Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise

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59 tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the  
60 tax imposed by this article shall not be due.

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

64 2. *The revenues generated under this section that are attributable solely to the increase in the tax*  
65 *rate enacted by the 2011 Session of the General Assembly shall be appropriated as follows: 52 percent*  
66 *of the revenue for Medicaid waivers for intellectual disabilities pursuant to Chapter 303 of the Acts of*  
67 *Assembly of 2009, 40 percent for Medicaid reimbursement to hospitals and doctors, four percent to the*  
68 *Virginia Department of Health for the Virginia state tobacco quitline, and four percent to the Virginia*  
69 *Healthy Youth Foundation to prevent tobacco use.*

70 § 58.1-1021.02. (Effective January 1, 2011) Tax on tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

104 § 58.1-1021.05. Use of revenues.

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

108 B. *The revenues generated by the taxes under this section that are attributable solely to the increase*  
109 *in the tax rate enacted by the 2011 Session of the General Assembly shall be appropriated for Medicaid*  
110 *wavers for intellectual disabilities pursuant to Chapter 303 of the Acts of Assembly of 2009.*

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