

069215736

**SENATE BILL NO. 729**

Offered February 3, 2006

A *BILL to amend and reenact §§ 58.1-1000, 58.1-1001, 58.1-1003, and 58.1-1021.01 of the Code of Virginia, relating to taxes on tobacco products.*

Patrons—Hawkins, Puckett, Ruff and Wampler

Unanimous consent to introduce

Referred to Committee on Finance

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

**1. That §§ 58.1-1000, 58.1-1001, 58.1-1003, and 58.1-1021.01 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-1000. Definitions.

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

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Exclusive distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.1-336.1.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.1-336.1.

"Pack" means a package containing either 20 or 25 cigarettes.

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes.

"Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to retail dealers or other wholesale dealers for resale.

"Roll-your-own tobacco" has the same meaning as in § 5702 (o) of the Internal Revenue Code, and as such section may be amended.

"Stamping agent" shall have the same meaning as provided in § 3.1-336.3. In addition, for the purposes of "roll-your-own" tobacco, "stamping agent" shall also have the same meaning as "distributor" provided in § 58.1-1021.01.

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp which will effectuate the purposes of this chapter including but not limited to decalomania and metering devices.

"Storage" means any keeping or retention in the Commonwealth of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside the Commonwealth.

"Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or by any transaction where possession is given, except that it shall not include the sale of cigarettes in the regular course of business.

"Wholesale dealer" includes persons who sell cigarettes at wholesale only to retail dealers for the purpose of resale only, or who sell at wholesale to institutional, commercial or industrial users. The phrase shall also include chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail.

§ 58.1-1001. Tax levied; rate.

INTRODUCED

SB729

59 *A. Except as provided in subsection B,*~~in~~ in addition to all other taxes now imposed by law, every  
60 person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any  
61 substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to  
62 this Commonwealth an excise tax of one and one-quarter mills on each such cigarette sold, stored or  
63 received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received  
64 on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents on each  
65 such cigarette sold, stored or received on and after July 1, 2005.

66 *B. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the*  
67 *privilege of selling or dealing in roll-your-own tobacco in the Commonwealth by any person engaged in*  
68 *business as a distributor thereof, at the rate of 10 percent of the manufacturer's sales price of such*  
69 *roll-your-own tobacco. Such tax shall be imposed at the time the stamping agent (i) brings or causes to*  
70 *be brought into the Commonwealth from outside the Commonwealth roll-your-own tobacco for sale; (ii)*  
71 *makes, manufactures, or fabricates roll-your-own tobacco in the Commonwealth for sale in the*  
72 *Commonwealth; or (iii) ships or transports roll-your-own tobacco to retailers in the Commonwealth to*  
73 *be sold by those retailers.*

74 *C. The revenues generated by the ~~tax~~taxes imposed under this section on and after August 1, 2004,*  
75 *shall be collected by the Department and deposited into the Virginia Health Care Fund established under*  
76 *§ 32.1-366.*

77 *§ 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties.*

78 *A. The taxes imposed by this chapter shall be paid by affixing stamps equaling the amount of the tax*  
79 *in the manner and at the time herein set forth. The stamps shall be affixed to each individual package,*  
80 *bag, box or can in such a manner that their removal will require continued application of water or*  
81 *steam. Time allowed for affixing stamps shall be as follows: Every stamping agent in this*  
82 *Commonwealth shall, within one business day of receipt of any unstamped cigarettes, affix to the same*  
83 *the requisite denominations and amount of stamp or stamps that represent the proper tax levied by this*  
84 *chapter. Stamping shall be continued with reasonable diligence by the stamping agent. Any wholesale*  
85 *dealer engaged in interstate business shall be permitted to set aside such part of his stock as may be*  
86 *necessary for the conduct of such interstate business without affixing the Virginia revenue stamps*  
87 *required by this chapter. Interstate stock shall be kept entirely separate from stamped stock in such a*  
88 *manner as to prevent the commingling of the interstate stock with the stamped stock. All interstate stock*  
89 *so set aside shall be in accordance with § 58.1-1010.*

90 *B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a*  
91 *true duplicate invoice of the same which shall show full and complete details of the sale or delivery of*  
92 *the taxable article. All stamping agents shall also keep a record of purchases of all cigarettes, and retain*  
93 *all books, records, and memoranda pertaining to the purchase and sale of such cigarettes for a period of*  
94 *five years, and such records shall be subject to examination by the Department upon request.*

95 *C. Every stamping agent shall be required to file a report between the first and twentieth of each*  
96 *month, covering all revenue stamps the stamping agent affixed to cigarettes during the preceding month.*  
97 *The report shall list all brands of cigarettes to which the Virginia revenue stamp was affixed and the*  
98 *quantity, measured in packs, of all such brands to which the Virginia revenue stamp was affixed. In*  
99 *addition, the report shall list the name and address of both the manufacturer of the cigarettes and the*  
100 *entity from which the cigarettes were obtained.*

101 *D. 1. Every stamping agent that is required to pay the excise tax on roll-your-own tobacco pursuant*  
102 *to subsection B of § 58.1-1001 shall be required to file a return between the first and the twentieth day*  
103 *of each month on a form prescribed by the Department, covering the purchase of roll-your-own tobacco*  
104 *by such stamping agent during the preceding month for which tax is imposed pursuant to subsection B*  
105 *of § 58.1-1001, during the preceding month. Each return shall include the name of the manufacturer,*  
106 *brand family, brand style, the manufacturer's sales price by weight, and the quantity sold by weight. The*  
107 *return shall be made on a form furnished or prescribed by the Department and shall be accompanied by*  
108 *such further information as the Department shall require. The stamping agent, at the time of the filing*  
109 *of the return, shall pay to the Department the tax imposed under subsection B of § 58.1-1001 on the*  
110 *manufacturer's sales price for all such roll-your-own tobacco purchased in the preceding month on*  
111 *which tax is due. Such return shall fulfill the obligation of a stamping agent to file a monthly report*  
112 *pursuant to § 58.1-1008.*

113 *2. Roll-your-own tobacco for which the Commonwealth collects excise tax pursuant to subsection B*  
114 *of § 58.1-1001 shall be deemed to bear the excise tax stamp of the Commonwealth upon the payment of*  
115 *such tax.*

116 *3. For the purpose of compensating stamping agents for accounting for the tax imposed under this*  
117 *article on roll-your-own tobacco, such stamping agents shall be allowed when filing a monthly return*  
118 *and paying the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent*  
119 *at the time of payment.*

120 *4. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all*

discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

DE. Any stamping agent who fails or refuses to comply with any of the above provisions shall have such agent's permit to affix revenue stamps revoked by the Commissioner. Additionally, a stamping agent may be subject to a civil penalty of \$500 for each day after the due date that an agent fails or refuses to file a report required under subsection C. The penalty shall be assessed and collected by the Department as other taxes are collected.

§ 58.1-1021.01. Definitions.

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

"Package" means any package, bag, box, can, or other container in which tobacco products are packaged and sold.

"Purchase price" means the same as sales price but applies to the total price paid for tobacco products.

"Retail dealer" means every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any tobacco product.

"Sales price" means the total amount for which tobacco products are sold, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include any cash discount allowed and taken or finance charges, carrying charges, service charges or interest from credit extended on sales of tobacco products.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702 (a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m) of the Internal Revenue Code, and as such section may be amended; *or* (iii) "pipe tobacco" as defined in § 5702 (n) of the Internal Revenue Code, and as such section may be amended; ~~or (iv) "roll-your-own tobacco" as defined in § 5702 (o) of the Internal Revenue Code, and as such section may be amended.~~

"Wholesale dealer" means persons who sell any tobacco product at wholesale to retail dealers, or who sell any tobacco product at wholesale to institutional, commercial or industrial users.

§ 58.1-1021.01. (Effective January 1, 2006) Definitions.

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

"Distributor" means (i) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702 (a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m) of the Internal Revenue Code, and as such section may be amended; (iii) "pipe tobacco" as defined in § 5702 (n) of the Internal Revenue Code, and as such section may be amended; or (iv) "roll-your-own tobacco" as defined in § 5702 (o) of the Internal Revenue Code, and as such section may be amended.