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## SENATE BILL NO. 729

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 8, 2006)

(Patron Prior to Substitute—Senator Hawkins)

A *BILL to amend and reenact §§ 3.1-336.8, 58.1-1000, 58.1-1001, 58.1-1003, and 58.1-1021.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1003.1, relating to taxes on tobacco products.*

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

**1. That §§ 3.1-336.8, 58.1-1000, 58.1-1001, 58.1-1003, and 58.1-1021.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1003.1 as follows:**

§ 3.1-336.8. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit to the Commissioner such information as the Commissioner and Attorney General require to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. *For roll-your-own tobacco, in lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent submit the total quantity in ounces, by brand family, of all such roll-your-own tobacco for which the stamping agent prepared the certification required pursuant to subsection C of § 58.1-1003.1 or otherwise paid the tax due for such roll-your-own tobacco.* The stamping agent shall maintain, and make available to the Commissioner and Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Commissioner and Attorney General for a period of five years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the Commissioner or Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this article.

§ 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.

"Stamping agent" shall have the same meaning as provided in § 3.1-336.3. *For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" shall include "distributor" as that term is defined in § 58.1-1021.01.*

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

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

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

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

73 § 58.1-1001. Tax levied; rate.

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

81 *B. In addition to all other taxes now imposed by law, every person within the Commonwealth who*  
82 *sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within this*  
83 *Commonwealth, shall pay to this Commonwealth a cigarette excise tax at the rate of 10% of the*  
84 *manufacturer's sales price of such roll-your-own tobacco.*

85 *C. The revenues generated by the ~~tax~~ taxes imposed under this section on and after August 1, 2004,*  
86 *shall be collected by the Department and deposited into the Virginia Health Care Fund established under*  
87 *§ 32.1-366.*

88 § 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties.

89 ~~A. The~~ *Except as otherwise specifically provided pursuant to § 58.1-1003.1, the taxes imposed by*  
90 *this chapter shall be paid by affixing stamps equaling the amount of the tax in the manner and at the*  
91 *time herein set forth. The stamps shall be affixed to each individual package, bag, box or can in such a*  
92 *manner that their removal will require continued application of water or steam. Time allowed for*  
93 *affixing stamps shall be as follows: Every stamping agent in this Commonwealth shall, within one*  
94 *business day of receipt of any unstamped cigarettes, affix to the same the requisite denominations and*  
95 *amount of stamp or stamps that represent the proper tax levied by this chapter. Stamping shall be*  
96 *continued with reasonable diligence by the stamping agent. Any wholesale dealer engaged in interstate*  
97 *business shall be permitted to set aside such part of his stock as may be necessary for the conduct of*  
98 *such interstate business without affixing the Virginia revenue stamps required by this chapter. Interstate*  
99 *stock shall be kept entirely separate from stamped stock in such a manner as to prevent the*  
100 *commingling of the interstate stock with the stamped stock. All interstate stock so set aside shall be in*  
101 *accordance with § 58.1-1010.*

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

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

113 *D. 1. For the purpose of compensating stamping agents for accounting for the tax imposed under*  
114 *this article on roll-your-own tobacco, such stamping agents shall be allowed when filing a monthly*  
115 *return and paying the tax to deduct 2% of the tax otherwise due if the amount due was not delinquent*  
116 *at the time of payment.*

117 *2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all*  
118 *discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into*  
119 *consideration in preparing the official estimate of the total revenues to be collected during the fiscal*  
120 *year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available*  
121 *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.

§ 58.1-1003.1. *Roll-your-own tobacco cigarette excise tax; how paid; stamping process; records of stamping agents.*

A. The taxes imposed by subsection B of § 58.1-1001 shall be paid by the stamping agent at the time he files the return required pursuant to this section. Upon payment of the tax and production and transmission of the documentation required by this section, the subject roll-your-own tobacco shall be deemed to bear the Virginia revenue stamp otherwise required by this article.

B. Unless specifically provided otherwise in this section, the requirements for paying tax and filing returns relating to roll-your-own tobacco with the Department shall be as provided in Article 2.1 (§ 58.1-1021.01 et seq.) of this chapter.

C. Any stamping agent who pays the cigarette excise tax imposed by this article on roll-your-own tobacco shall prepare an initial certification, signed by an authorized principal or employee of the stamping agent, describing the manufacturer, brand, and quantity in ounces of all roll-your-own tobacco included in each shipment made by the stamping agent of product intended for resale within the Commonwealth or sale to consumers within the Commonwealth. A copy of the certification shall be attached to the shipment and shall be deemed the cigarette revenue stamp otherwise required by this article. Any wholesaler, distributor, or entity of any kind that subsequently ships the roll-your-own tobacco, or some portion of it, shall (i) cause a copy of the certification to be included with such subsequent shipment, and (ii) indicate by addendum to the certification any changes in quantity from that reflected in the initial certification. Only manufacturers, wholesale dealers, and retail dealers permitted pursuant to § 58.1-1011 shall prepare the initial certification described in this subsection.

§ 58.1-1021.01. 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; 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.~~

**2. That the provisions of this act shall become effective on January 1, 2007.**