

10104691D

**HOUSE BILL NO. 626****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance  
on February 1, 2010)

(Patron Prior to Substitute—Delegate Kilgore)

*A BILL to amend and reenact §§ 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1021.02:1, relating to the tobacco products tax; moist snuff.*

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

**1. That §§ 58.1-1021.01, 58.1-1021.02, and 58.1-1021.03, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1021.02:1 as follows:**

§ 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.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground or powdered tobacco that is intended to be placed in the nasal cavity.

"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.

§ 58.1-1021.02. Tax on tobacco products; Tobacco Enforcement Fund established.

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

1. Upon each package of moist snuff, at the rate of \$0.17 per ounce with a proportionate tax at the same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

2. Upon tobacco products other than moist snuff, at the rate of 10 percent of the manufacturer's sales price of such tobacco products.

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

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

C. A distributor of moist snuff that calculates and pays the tax under subdivision A 1 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent

HOUSE SUBSTITUTE

HB626H1

60 *determination that such weight information was incorrect.*

61 *§ 58.1-1021.02:1. Annual reports by manufacturers of tobacco products.*

62 *Each manufacturer that ships tobacco products to any person located in the Commonwealth shall file*  
63 *a report with the Department no later than the twentieth of January in each year identifying all such*  
64 *shipments made by the manufacturer during the preceding year. Such reports shall identify the names*  
65 *and addresses of the persons within the Commonwealth to whom the shipments were made and the*  
66 *quantities of tobacco products shipped, by type of product and brand.*

67 *§ 58.1-1021.03. Monthly return and payments of tax.*

68 A. Every distributor subject to the tax imposed under this article shall file a monthly return no later  
69 than the twentieth of each month on a form prescribed by the Department, covering the purchase of  
70 tobacco products by such distributor during the preceding month, for which tax is imposed pursuant to  
71 subsection A of § 58.1-1021.02, during the preceding month. Each return shall show the quantity and  
72 manufacturer's sales price of each tobacco product (i) brought, or caused to be brought, into the  
73 Commonwealth for sale; and (ii) made, manufactured, or fabricated in the Commonwealth for sale in the  
74 Commonwealth during the preceding calendar month. Every licensed distributor outside the  
75 Commonwealth shall in a like manner file a return showing the quantity and manufacturer's sales price  
76 of each tobacco product shipped or transported to retailers in the Commonwealth to be sold by those  
77 retailers, during the preceding calendar month. The return shall be made on forms furnished or  
78 prescribed by the Department and shall contain or be accompanied by such further information as the  
79 Department shall require. The distributor, at the time of filing the return, shall pay to the Department the  
80 tax imposed under subsection A of § 58.1-1021.02 ~~on the manufacturer's sales price~~ for each such  
81 package of tobacco product purchased in the preceding month on which tax is due.

82 B. For the purpose of compensating dealers for accounting for the tax imposed under this article, a  
83 retail dealer or wholesale dealer shall be allowed when filing a monthly return and paying the tax to  
84 deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of  
85 payment.

86 The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all  
87 discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be  
88 taken into consideration in preparing the official estimate of the total revenues to be collected during the  
89 fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding  
90 available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be  
91 made up by the general fund.

92 **2. That the provisions of this act shall become effective on January 1, 2011.**