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SENATE BILL NO. 1226

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on January 27, 2011)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 46.2-205, 58.1-604.2, 58.1-613, 58.1-633, 58.1-634, and 58.1-3700 of the Code of Virginia, relating to select offices of the Department of Motor Vehicles; commissioners of the revenue; powers and duties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-205, 58.1-604.2, 58.1-613, 58.1-633, 58.1-634, and 58.1-3700 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-205. Department offices and agencies; agreements with dealers.

A. The Commissioner shall maintain his office in the Commonwealth at a location which he determines to be appropriate. He may appoint agents and maintain branch offices in the Commonwealth in whatever locations he determines to be necessary to carry out this title.

The personnel of each branch office and each agency shall be appointed by the Commissioner and shall be bonded in an amount fixed by the Commissioner. The person in charge of the branch office and each agency shall deposit daily in the local bank, or at such other intervals as may be designated by the Commissioner, to the account of the State Treasurer, all moneys collected, *except those fees and service charges set forth in subdivision D 2*, and shall submit daily to the Commissioner, or at such other intervals as may be designated by the Commissioner, a complete record of what each deposit is intended to cover. The Commissioner shall not be held liable in the event of the loss of any moneys collected by such agents resulting from their failure to deposit such money to the account of the State Treasurer.

The compensation of the personnel of each branch office and each agency is to be fixed by the Commissioner. The compensation fixed for each nonautomated agency for the purpose of maintaining adequate annual service to the public shall be three and one-half percent of the first \$500,000 of gross collections made by the agency, two percent of the next \$500,000 of gross collections made by the agency, and one percent of all gross collections in excess of \$1,000,000 made by the agency during each fiscal year.

The compensation fixed for each automated agency for the purpose of maintaining adequate annual service to the public shall be three and one-half percent of gross collections made by the agency during each fiscal year.

The compensation awarded shall belong to the agents for their services under this section, and the Commissioner shall cause to be paid all freight, cartage, premium on bond and postage, but not any extra clerk hire or other expenses occasioned by their duties. *The compensation for each agency is to be fixed as set forth in subdivision D 2.*

B. The Commissioner may enter into an agreement with any Virginia-licensed motor vehicle dealer, T&M vehicle dealer, trailer dealer, or motorcycle dealer to act as an agent of the Commissioner as provided in subsection A. *Motor vehicle dealers, T&M vehicle dealers, trailer dealers, and motorcycle dealers who act as agents of the Commissioner of the Department of Motor Vehicles as authorized in this subsection shall be compensated as provided in subsection A.*

C. Upon the request of the revenue officer of any county or city, the Commissioner shall enter into an agreement with such revenue officer to act as an agent of the Commissioner and to establish an agency as provided in subsection A, except that the Commissioner:

1. Shall appoint no more than 10 such agents in any calendar year, not including any such agents previously appointed;

2. Shall have discretion, if more than one revenue officer requests to enter an agency agreement, to determine the priority in which those requests shall be filled, taking into consideration the business needs of the Department;

3. Shall appoint no more than 75 such agents to serve at any one time;

4. Shall not appoint any such agent in any county or city in which there is located either (i) a branch office maintained by the Commissioner or (ii) an agency maintained by an agent of the Commissioner, except those localities currently authorized; and

5. Shall not have more than one agency location in any county or city except those locations currently authorized.

For purposes of this section, "revenue officer" means the commissioner of the revenue elected to serve the county or city, the treasurer elected to serve the county or city, or, for a county or city in which no commissioner of the revenue or treasurer has been elected, the director of finance for the county or city.

60 *For purposes of this subsection, if a branch office maintained by the Commissioner or an agency*
61 *maintained by an agent of the Commissioner is located in a town, such branch office or agency shall be*
62 *considered located in the county within which such town is located.*

63 *The Commissioner may terminate for cause any agreement executed under this subsection.*

64 *D. 1. An agent appointed under subsection C shall charge the same fees and service charges for its*
65 *services as an agent as those fees and service charges charged at a branch office maintained by the*
66 *Commissioner. The agent shall remit to the Department all such fees and service charges that the agent*
67 *collects.*

68 *2. In addition to the other fees and service charges provided under this subsection, the agent may*
69 *impose and collect a service charge, not to exceed \$5 per transaction, which the agent may retain as*
70 *compensation for its services. The agent shall not receive any other compensation for its services as an*
71 *agent, nor shall the Commissioner cause to be paid to the agent any freight, cartage, premium on bond,*
72 *postage, extra clerk hire, or any other expense occasioned by the agent's duties.*

73 *No agent appointed under subsection C shall process any transaction from a Virginia-licensed motor*
74 *vehicle dealer, T&M vehicle dealer, trailer dealer, or motorcycle dealer who also participates in an*
75 *online dealer system approved by the Department.*

76 *E. The Commissioner shall have the authority to act as the agent of any revenue officer for the*
77 *purpose of collecting any fee, tax, or other liability that prevents the Department from processing a*
78 *transaction under § 46.2-646. The Commissioner shall remit all such collections to the appropriate*
79 *revenue officer.*

80 *§ 58.1-604.2. Filing return; payment of tax.*

81 *Before any property subject to the use tax is brought into this Commonwealth for use as provided in*
82 *§ 58.1-604.1, the owner, or, if the property is leased, the lessee shall register with the Tax Commissioner*
83 *or the local commissioner of the revenue. The local commissioner of the revenue shall as soon as*
84 *practicable provide the Tax Commissioner with a copy of each certificate of registration he has issued*
85 *and the related application for the same.*

86 *After registration, the taxpayer shall file quarterly reports on forms furnished by the Tax*
87 *Commissioner reporting such property brought, imported or caused to be brought into this*
88 *Commonwealth during the preceding quarter together with remittance of the amount of tax due. Such*
89 *reports are to be filed on or before the fifteenth of the month following the quarter in which such*
90 *property was brought into this Commonwealth.*

91 *§ 58.1-613. Dealers' certificates of registration.*

92 *A. Every person desiring to engage in or conduct business as a dealer in this Commonwealth shall*
93 *file with the Tax Commissioner or the local commissioner of the revenue an application for a certificate*
94 *of registration for each place of business in this Commonwealth.*

95 *B. Every application for a certificate of registration shall set forth the name under which the*
96 *applicant transacts or intends to transact business, the location of his place or places of business, and*
97 *such other information as the Tax Commissioner or the local commissioner of the revenue may require,*
98 *provided that the local commissioner of the revenue shall implement procedures to ensure that any such*
99 *application he receives contains substantially the same information as, and is substantially similar to,*
100 *applications required by the Tax Commissioner for the issuance of a certificate of registration.*

101 *C. When the required application has been made, the Tax Commissioner or the local commissioner*
102 *of the revenue, as applicable, shall issue to each applicant a separate certificate of registration for each*
103 *place of business within this Commonwealth. A certificate of registration is not assignable and is valid*
104 *only for the person in whose name it is issued and for the transaction of business at the place designated*
105 *therein. It shall be at all times conspicuously displayed at the place for which issued.*

106 *D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation*
107 *relating thereto, the Tax Commissioner, upon hearing after giving such person ~~ten~~ 10 days' notice in*
108 *writing, specifying the time and place of hearing and requiring him to show cause why his certificate of*
109 *registration should not be revoked or suspended, may revoke or suspend any one or more of the*
110 *certificates of registration held by such person. The notice may be personally served or served by*
111 *registered mail directed to the last known address of such person. The Tax Commissioner's powers of*
112 *revocation and suspension shall extend to certificates of registration issued by the local commissioner of*
113 *the revenue, and the local commissioner of the revenue shall comply accordingly with such action taken*
114 *by the Tax Commissioner.*

115 *E. Any person who engages in business as a dealer in this Commonwealth without obtaining a*
116 *certificate of registration, or after a certificate of registration has been suspended or revoked, and each*
117 *officer of any corporation which so engages in business shall be guilty of a Class 2 misdemeanor. Each*
118 *day's continuance in business in violation of this section shall constitute a separate offense.*

119 *F. If the holder of a certificate of registration ceases to conduct his business at the place specified in*
120 *his certificate, the certificate shall thereupon expire, and such holder shall inform the Tax Commissioner*
121 *in writing within ~~thirty~~ 30 days after he has ceased to conduct such business at such place that he has*

so ceased. If the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly.

The holder of a certificate of registration alternatively may complete the transactions described in this subsection with the local commissioner of the revenue, who shall as soon as practicable provide to the Tax Commissioner a copy of any revised certificate of registration or any writing by a holder of a certificate of registration giving notice of the cessation of business.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

H. At the request of a local commissioner of revenue, the Tax Commissioner shall provide, on a quarterly basis, a listing of new businesses in the locality which obtained a certificate of registration.

I. Notwithstanding any other provision of this section, the local commissioner of the revenue of a county, city, or town shall not issue a certificate of registration unless the applicant is applying to engage in or conduct business as a dealer in the county, city, or town. In addition, the local commissioner of the revenue shall revise only those certificates of registration his office has issued.

J. The local commissioner of the revenue shall as soon as practicable provide the Tax Commissioner with a copy of each certificate of registration he has issued or revised and the related application and materials for the same.

§ 58.1-633. Records.

A. Every dealer required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Tax Commissioner.

B. In order to aid in the administration and enforcement of the provisions of this chapter, all wholesalers and jobbers in this Commonwealth shall keep a record of all sales of tangible personal property, whether such sales be for cash or on terms of credit. Such records shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. Any wholesaler or jobber failing to keep such records shall be guilty of a Class 1 misdemeanor. Any person who is both a retailer and a wholesaler or jobber and who fails to keep proper records showing wholesale sales and retail sales separately shall pay the tax as a retailer on both classes of his business.

C. For the purpose of enforcing the collection of the tax levied by this chapter, the Tax Commissioner or local commissioner of the revenue is authorized to examine the books, records, and other documents of all transportation companies, agencies, firms, or persons as defined herein that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If such transportation company, agency, firm or person as defined herein refuses to permit such examination of its or his books, records, and other documents by the Tax Commissioner, as aforesaid, it or he shall be guilty of a Class 1 misdemeanor. The Tax Commissioner may proceed by petitioning the appropriate circuit court to require the transportation company, agency, firm, or person to show cause as to why such books, records, and other documents should not be examined pursuant to the injunction of the court, and as to why a bond should not be required with proper security in the penalty of not more than \$2,000 conditioned upon compliance with the provisions hereof for a period of not more than 1 year.

D. The local commissioner of the revenue shall as soon as practicable report in detail on the results of any such examination to the Tax Commissioner, including but not limited to any local use tax or portion thereof that has been incorrectly distributed pursuant to subsection F of § 58.1-606.

§ 58.1-634. Period of limitations.

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time within six years from such date. The Tax Commissioner or local commissioner of the revenue shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by law to file a return and failed to do so.

The local commissioner of the revenue shall as soon as practicable report in detail on the results of any such examination to the Tax Commissioner, including but not limited to any local use tax or portion thereof that has been incorrectly distributed pursuant to subsection F of § 58.1-606.

§ 58.1-3700. License requirement; requiring evidence of payment of business license, business

183 personal property, meals and admissions taxes.

184 A. Whenever a license is required by ordinance adopted pursuant to this chapter and whenever the
185 local governing body shall impose a license fee or levy a license tax on any business, employment or
186 profession, it shall be unlawful to engage in such business, employment or profession without first
187 obtaining the required license. The governing body of any county, city or town may require that no
188 business license under this chapter shall be issued until the applicant has produced satisfactory evidence
189 that all delinquent business license, personal property, meals, transient occupancy, severance and
190 admissions taxes owed by the business to the county, city or town have been paid which have been
191 properly assessed against the applicant by the county, city or town.

192 Any person who engages in a business without obtaining a required local license, or after being
193 refused a license, shall not be relieved of the tax imposed by the ordinance.

194 B. *In addition to the provisions of subsection A, the commissioner of the revenue for each locality*
195 *that imposes the local license fee or tax in accordance with the provisions of this chapter shall verify*
196 *that every taxpayer seeking a local business license who is subject to the state licensing requirements of*
197 *the Department of Professional and Occupational Regulation has satisfied such requirements and*
198 *obtained a state license. No local business license shall be issued until the commissioner of the revenue*
199 *has such verification. If the commissioner of the revenue determines that a taxpayer is attempting to*
200 *operate a business without the appropriate state license from the Department of Professional and*
201 *Occupational Regulation, the commissioner shall report such taxpayer to the Department of Professional*
202 *and Occupational Regulation.*

203 **2. That, notwithstanding the provisions of subsection C of § 46.2-205 of the Code of Virginia, the**
204 **Commissioner of the Department of Motor Vehicles may enter into an agreement with an agent**
205 **who is neither a motor vehicle dealer nor a local revenue officer, provided such agent was**
206 **appointed under an agreement in effect on January 1, 2011. However the provisions of subsection**
207 **D of § 46.2-205 of the Code of Virginia shall not apply to any such agent.**