

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 38.2-4809, as it is effective for the taxable year commencing on or after
3 January 1, 2013, §§ 38.2-4809.1 and 58.1-3, §§ 58.1-2504, 58.1-2505, 58.1-2507, 58.1-2525, and
4 58.1-2526, as such sections are effective for the taxable year commencing on or after January 1,
5 2013, and § 58.1-2527 of the Code of Virginia, relating to the administration of fees and taxes on
6 insurance entities.

7 [S 1216]

8 Approved

9 Be it enacted by the General Assembly of Virginia:

10 1. That § 38.2-4809, as it is effective for the taxable year commencing on or after January 1, 2013,
11 §§ 38.2-4809.1 and 58.1-3, §§ 58.1-2504, 58.1-2505, 58.1-2507, 58.1-2525, and 58.1-2526, as such
12 sections are effective for the taxable year commencing on or after January 1, 2013, and
13 § 58.1-2527 of the Code of Virginia are amended and reenacted as follows:

14 § 38.2-4809. (Effective for the taxable year commencing on or after January 1, 2013) Licensees
15 to pay license taxes on insurers.

16 A. 1. Every licensed surplus lines broker or any person required to be licensed as a surplus lines
17 broker shall be subject to the annual taxes, license taxes, penalties, and other provisions of Article 1
18 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him during
19 the preceding calendar year with an insurer not licensed to transact insurance business in this
20 Commonwealth. For policies effective on or after July 1, 2011, such payments shall be made based on
21 the direct gross premium income derived from policies for insureds whose home state is this
22 Commonwealth.

23 2. Every surplus lines broker or any person required to be licensed as a surplus lines broker subject
24 to the provisions of this chapter shall, on or before March 1 of 2012 and 2013 report under oath to the
25 Commission, and on or before March 1 of each year thereafter, report under oath to the Department of
26 Taxation, upon the prescribed form, the direct gross premium income derived from policies for insureds
27 whose home state is this Commonwealth during the preceding year ending December 31.

28 3. Every surplus lines broker or any person required to be licensed as a surplus lines broker failing
29 to file the report required by this section shall be fined \$50 for each day's failure to file the report.

30 4. Upon the failure of any such surplus lines broker or any person required to be licensed as a
31 surplus lines broker to pay the premium license tax within the time required by this section, there shall
32 be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the
33 rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full
34 payment. The Commission or Department of Taxation shall notify the surplus lines broker of all
35 additional amounts owed, and the surplus lines broker shall pay such amounts within 14 30 days of the
36 date of the notice.

37 5. Upon good cause shown, the Department of Taxation may accept late payment of the premium
38 license tax exclusive of penalties; however, interest shall be paid on such tax as prescribed in this
39 subsection.

40 6. If any person overestimates and overpays the annual taxes, the Department of Taxation shall
41 refund the amount of the overpayment to the person. The overpayment shall be refunded out of the state
42 treasury.

43 B. 1. Each licensed surplus lines broker or any person required to be licensed as a surplus lines
44 broker whose annual premium license tax liability can reasonably be expected to exceed \$1,500 shall
45 file a quarterly tax report with the Department of Taxation. Such report shall be in a form prescribed by
46 the Department of Taxation. This report shall be filed no later than thirty calendar days after the end of
47 each calendar quarter. Notwithstanding any provision to the contrary, each such person shall pay the
48 premium license tax owed for the direct gross premiums adjusted for additional and returned premiums
49 shown by each quarterly tax report when such report is filed with the Department of Taxation.

50 2. No surplus lines broker or any person required to be licensed as a surplus lines broker shall be
51 subject to any penalty or interest pursuant to Title 58.1 as a result of the failure to timely file a
52 quarterly tax report or make the related quarterly payment when the report is filed pursuant to
53 subdivision 1.

54 C. In addition to other penalties provided by law, any licensed surplus lines broker or any person
55 required to be licensed as a surplus lines broker who willfully fails or refuses to pay the full amount of
56 the tax or assessment required by this chapter, either by himself or through his agents or employees, or

57 who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who
58 makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

59 D. If any licensed surplus lines broker or any person required to be licensed as a surplus lines broker
60 charges and collects from the insured the taxes and assessments required by this section and
61 § 38.2-4809.1, such person shall be a fiduciary to this Commonwealth for any taxes and assessments
62 owed to this Commonwealth under this chapter.

63 **§ 38.2-4809.1. Licensees to pay assessments on insurers.**

64 Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker
65 shall be subject to the annual maintenance fund assessment, penalties, and other provisions of
66 §§ 38.2-400 and 38.2-403, and 38.2-406. If any person overestimates and overpays the assessment or
67 annual taxes, the Commission shall order a refund of the amount of the overpayment to the person. The
68 overpayment shall be refunded out of the state treasury on the order of the Commission upon the
69 Comptroller.

70 **§ 58.1-3. Secrecy of information; penalties.**

71 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax
72 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or
73 revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512
74 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge
75 any information acquired by him in the performance of his duties with respect to the transactions,
76 property, including personal property, income or business of any person, firm or corporation. Such
77 prohibition specifically includes any copy of a federal return or federal return information required by
78 Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any
79 reports, returns, financial documents or other information filed with the Attorney General pursuant to the
80 provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the
81 provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection
82 shall not be applicable, however, to:

- 83 1. Matters required by law to be entered on any public assessment roll or book;
- 84 2. Acts performed or words spoken or published in the line of duty under the law, published, or
85 shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
- 86 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a
87 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to
88 its study, provided that any such information obtained shall be privileged;
- 89 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any
90 information required for building permits;
- 91 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court
92 pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;
- 93 6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when
94 requested by the General Assembly or any duly constituted committee of the General Assembly;
- 95 7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the
96 provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the
97 Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow
98 fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the
99 Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two
100 calendar years or in any year in which the Attorney General receives Stamping Agent information that
101 potentially alters the required escrow deposit of the manufacturer. The information shall only be
102 provided in the following manner: the manufacturer may make a written request, on a quarterly or
103 yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the
104 amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who
105 reported stamping or selling its products and the amount reported. The Attorney General shall provide
106 the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the
107 reports the Stamping Agents filed with the Attorney General, it must first request them from the
108 Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the
109 reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the
110 Attorney General, including a copy of the prior written request to the Stamping Agent and any response
111 received, for copies of any reports not received. The Attorney General shall provide copies of the
112 reports within 45 days of receipt of the request.

113 B. Nothing contained in this section shall be construed to prohibit the publication of statistics so
114 classified as to prevent the identification of particular reports or returns and the items thereof or the
115 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together
116 with any relevant information which in the opinion of the Department may assist in the collection of
117 such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing

118 whether a person, firm or corporation is licensed to do business in that locality and divulging, upon
 119 written request, the name and address of any person, firm or corporation transacting business under a
 120 fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue
 121 is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner
 122 with information obtained from local tax returns and other information pertaining to the income, sales
 123 and property of any person, firm or corporation licensed to do business in that locality.

124 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax
 125 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director
 126 of finance or other similar collector of county, city or town taxes who, for the performance of his
 127 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the
 128 Commissioner of the Department of Social Services, upon written request, information on the amount of
 129 income, filing status, number and type of dependents, and whether a federal earned income tax credit
 130 has been claimed as reported by persons on their state income tax returns who have applied for public
 131 assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer
 132 of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the
 133 names and home addresses of those persons identified by the designated guarantor as having delinquent
 134 loans guaranteed by the designated guarantor; (iv) provide current address information upon request to
 135 state agencies and institutions for their confidential use in facilitating the collection of accounts
 136 receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the
 137 collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the
 138 Commissioner of the Virginia Employment Commission, after entering into a written agreement, such
 139 tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid
 140 benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement,
 141 such tax information as may be necessary to facilitate the collection of state and local taxes and the
 142 administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery
 143 Department such tax information as may be necessary to identify those lottery ticket retailers who owe
 144 delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax
 145 information as may be necessary to facilitate the location of owners and holders of unclaimed property,
 146 as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written
 147 agreement, such tax information as may be necessary to facilitate the collection of taxes and fees
 148 administered by the Commission; (x) provide to the Executive Director of the Potomac and
 149 Rappahannock Transportation Commission for his confidential use such tax information as may be
 150 necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the
 151 Commissioner of the Department of Agriculture and Consumer Services such tax information as may be
 152 necessary to identify those applicants for registration as a supplier of charitable gaming supplies who
 153 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing
 154 and Community Development for its confidential use such tax information as may be necessary to
 155 facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270
 156 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and
 157 address information to private collectors entering into a written agreement with the Tax Commissioner,
 158 for their confidential use when acting on behalf of the Commonwealth or any of its political
 159 subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private
 160 collector who has used or disseminated in an unauthorized or prohibited manner any such information
 161 previously provided to such collector; (xiv) provide current name and address information as to the
 162 identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any
 163 person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for
 164 injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or
 165 Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering
 166 into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid
 167 wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource
 168 Management, upon entering into a written agreement, such tax information as may be necessary to
 169 identify persons receiving workers' compensation indemnity benefits who have failed to report earnings
 170 as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any
 171 other officer of any county, city, or town performing any or all of the duties of a commissioner of the
 172 revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list
 173 of the names, business addresses, and dates of registration of all dealers registered for such tax; and
 174 (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his
 175 confidential use such tax information as may be necessary to facilitate the collection of the motor
 176 vehicle fuel sales tax. The Tax Commissioner is further authorized to enter into written agreements with
 177 duly constituted tax officials of other states and of the United States for the inspection of tax returns, the
 178 making of audits, and the exchange of information relating to any tax administered by the Department

179 of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to
180 the prohibitions and penalties prescribed herein as though he were a tax official.

181 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
182 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
183 stating the reason for such request, the chief executive officer of any county or city with information
184 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
185 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
186 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
187 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
188 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
189 profession or occupation administered by the Department of Professional and Occupational Regulation,
190 only after the Department of Professional and Occupational Regulation exhausts all other means of
191 obtaining such information; and (iii) provide to any representative of a condominium unit owners'
192 association, property owners' association or real estate cooperative association, or to the owner of
193 property governed by any such association, the names and addresses of parties having a security interest
194 in real property governed by any such association; however, such information shall be released only
195 upon written request stating the reason for such request, which reason shall be limited to proposing or
196 opposing changes to the governing documents of the association, and any information received by any
197 person under this subsection shall be used only for the reason stated in the written request. The treasurer
198 or other local assessing official may require any person requesting information pursuant to clause (iii) of
199 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
200 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
201 prescribed herein as though he were a tax official.

202 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the
203 treasurer or other collector of taxes for a county, city or town is authorized to provide information
204 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course
205 of performing his duties to the commissioner of the revenue or other assessing official for such
206 jurisdiction for use by such commissioner or other official in performing assessments.

207 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a
208 motor vehicle local license decal the year, make, and model and any other legal identification
209 information about the particular motor vehicle for which that local license decal is assigned.

210 E. Notwithstanding any other provisions of law, state agencies and any other administrative or
211 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon
212 written request, the name, address, and social security number of a taxpayer, necessary for the
213 performance of the Commissioner's official duties regarding the administration and enforcement of laws
214 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax
215 Commissioner or his agent which may be deemed taxpayer information shall not relieve the
216 Commissioner of the obligations under this section.

217 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published
218 any confidential tax document which he knows or has reason to know is a confidential tax document. A
219 confidential tax document is any correspondence, document, or tax return that is prohibited from being
220 divulged by subsection A, B, C, or D and includes any document containing information on the
221 transactions, property, income, or business of any person, firm, or corporation that is required to be filed
222 with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document
223 has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person
224 violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

225 **§ 58.1-2504. (Effective for the taxable year commencing on or after January 1, 2013)**
226 **Companies commencing business.**

227 A. The license tax on a company commencing business in the Commonwealth shall be paid to the
228 Department before the license is issued. If a payment is made in an amount subsequently found to be in
229 error, the Department shall, if an additional amount is due, notify the taxpayer of the additional amount
230 due and the company shall pay such amount within 44 30 days of the date of the notice, and, if an
231 overpayment is made, ~~order~~ *issue* a refund as provided for in § 58.1-2505.

232 B. No license to transact the business of insurance shall be issued by the Commission for less than a
233 year except to a company when it first commences business in the Commonwealth, in which case the
234 initial license shall be issued for that part of the year from the date of the issuance of the license to
235 June 30 following.

236 **§ 58.1-2505. (Effective for the taxable year commencing on or after January 1, 2013) Amount of**
237 **license tax for company commencing business.**

238 The license tax on a company commencing business in the Commonwealth shall be measured by an
239 estimate of direct gross premium income reasonably expected to be derived from such business in the

240 Commonwealth from the time of commencing business to December 31 following. Every estimate made
 241 under this section shall be subject to review by the Department after the close of the year for which the
 242 estimate is made and, *if there is* any variance between the estimate and the actual direct gross premium
 243 income shall be adjusted by the Department by order of refund or, *the Department shall issue a refund*
 244 *or provide notice* of the assessment of additional license tax depending on whether such estimate was in
 245 excess of or less than the actual direct gross premium income of such company for such year.

246 **§ 58.1-2507. (Effective for the taxable year commencing on or after January 1, 2013) Penalties**
 247 **for failure to make report or pay tax; revocation of license; recovery by suit.**

248 A. Every company failing to make the report required by § 58.1-2506 shall be fined \$50 for each
 249 day's failure to make the report.

250 B. Upon the failure of any such company to pay the license tax within the time required by this
 251 chapter, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at
 252 a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date
 253 and the date of full payment. The Department shall notify the taxpayer of all additional amounts owed,
 254 and the taxpayer shall pay such amounts within 14 30 days of the date of the notice. If an overpayment
 255 is made, the Department shall issue a refund of the amount of the overpayment to the taxpayer pursuant
 256 to subsection B of § 58.1-2526. The Commission may suspend or revoke the company's license to do
 257 business in this Commonwealth pursuant to § 38.2-1040 upon notification by the Department that the
 258 additional amounts due are not paid. The Department shall proceed to recover the tax, penalty and
 259 interest (i) in the same manner as is done for any other tax administered by the Department or (ii) by
 260 proceedings brought to subject any bonds or other securities deposited by such company with the
 261 Treasurer.

262 C. If such failure is due to providential or other good cause shown to the satisfaction of the
 263 Department, such return or payment or return and payment may be accepted exclusive of penalties;
 264 however, such company shall pay interest on such tax as prescribed in subsection B.

265 **§ 58.1-2525. (Effective for the taxable year commencing on or after January 1, 2013) Extensions**
 266 **of time.**

267 The Department may grant a reasonable extension of time for payment of estimated tax, or any
 268 installment, or for filing any declaration pursuant to this article, on condition that the taxpayer shall pay
 269 interest on the amount involved at the rate of ~~three-fourths of one percent per month or fraction thereof~~
 270 ~~from the time the payment was due set forth in § 58.1-15~~ until the time of payment. ~~Whenever the~~
 271 ~~taxpayer, without having been granted an extension, fails to make payment of estimated tax, or any~~
 272 ~~installment, or file any declaration as required by this article, it shall pay interest on the amount~~
 273 ~~involved at the rate of one percent per month or fraction thereof from the time payment was due until~~
 274 ~~the time of payment.~~

275 **§ 58.1-2526. (Effective for the taxable year commencing on or after January 1, 2013) Where**
 276 **declarations filed and how payments made; refunding overpayments.**

277 A. Every insurance company required by this article to file a declaration and make payment of the
 278 estimated tax shall file and pay the same with the Department. All such payments shall be deposited by
 279 the Department into the state treasury.

280 B. If any insurance company overestimates and overpays estimated tax or overpays as a result of
 281 increased regulatory costs imposed pursuant to § 38.2-1026, the Department shall issue a refund of the
 282 amount of the overpayment to the taxpayer pursuant to Article 2 (§ 58.1-1820 et seq.) of Chapter 18.
 283 The overpayment shall be refunded out of the state treasury. *No interest shall be paid on the refund of*
 284 *any overpayment.*

285 **§ 58.1-2527. Failure to pay estimated tax.**

286 A. In case of any underpayment of estimated tax by an insurance company, there shall be added to
 287 the tax for the license year interest determined at the rate set forth in § 58.1-15 upon the amount of the
 288 underpayment for the period of the underpayment.

289 B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

- 290 1. The amount of the installment which would be required to be paid if the estimated tax were equal
 291 to ~~ninety~~ 90 percent of the tax ~~ascertained shown on the report~~ for the license year, over
- 292 2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

293 C. The period of the underpayment shall run from the date the installment was required to be paid to
 294 whichever of the following dates is the earlier:

- 295 1. The first day of the third month following the close of the taxable year.
- 296 2. With respect to any portion of the underpayment, the date on which such portion is paid. For
 297 purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a
 298 payment of any previous underpayment only to the extent such payment exceeds the amount of the
 299 installment determined under subdivision B 1 of ~~this section~~ for such installment date.

300 2. That the provisions of this act shall become effective for the taxable years commencing on or

301 after January 1, 2013.