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HOUSE BILL NO. 1310

Offered January 14, 2015

Prefiled November 11, 2014

A BILL to amend and reenact §§ 58.1-1021.01 through 58.1-1021.03, and 58.1-1021.04:1 through 58.1-1021.04:5, 58.1-3830, 58.1-3831, 58.1-3840, and 58.1-3907 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-3831.1 and by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1, relating to establishing state and local taxes on electronic cigarettes, electronic cigars, electronic cigarillos, and similar products and devices (vapor products).

Patrons—Krupicka and Plum; Senator: Puller

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01 through 58.1-1021.03, and 58.1-1021.04:1 through 58.1-1021.04:5, 58.1-3830, 58.1-3831, 58.1-3840, and 58.1-3907 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-3831.1 and by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1 as follows:

Article 2.1.**Tobacco and Vapor Products Tax.****§ 58.1-1021.01. Definitions.**

As used in this article, unless the context ~~clearly shows otherwise, the term or phrase requires a different meaning:~~

"Consumable product" means any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

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

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

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

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

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HB1310

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

61 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal
62 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m)
63 of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in
64 § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" ~~shall~~
65 ~~also include~~ *includes* loose leaf tobacco. *"Tobacco products" does not include any vapor product.*

66 *"Vapor product" means any noncombustible product that employs a mechanical heating element,*
67 *battery, or electronic circuit regardless of shape or size that can be used to produce vapor from*
68 *nicotine in a solution. "Vapor product" includes any vapor cartridge or other container of nicotine in a*
69 *solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar,*
70 *electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any*
71 *product regulated by the U.S. Food and Drug Administration under Chapter V of the Federal Food,*
72 *Drug, and Cosmetic Act.*

73 **§ 58.1-1021.02. Tax on tobacco and vapor products.**

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

77 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
78 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as
79 listed by the manufacturer on the package in accordance with federal law.

80 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
81 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
82 shall be imposed on the distributor for loose leaf tobacco as follows:

83 a. \$0.21 for each loose leaf tobacco single-unit;

84 b. \$0.40 for each loose leaf tobacco half pound-unit;

85 c. \$0.70 for each loose leaf tobacco pound-unit; and

86 d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and
87 shall be \$0.21 per unit, pouch, or package plus \$0.21 for each increment of 4 ounces or portion thereof
88 that the loose leaf tobacco exceeds 16 ounces.

89 The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the
90 provisions of subdivisions a- through d- only and regardless of sales price.

91 3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of 10 percent of
92 the manufacturer's sales price of such tobacco products.

93 4. *Upon any vapor product, at the rate of \$0.40 per milliliter of consumable product. All invoices for*
94 *vapor products issued by manufacturers shall state the amount of consumable product in milliliters.*

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

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

105 C. 1. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith
106 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice
107 shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent
108 determination that such weight information was incorrect.

109 2. *A distributor that calculates and pays the tax pursuant to subdivision A 4 in good faith reliance*
110 *on the amount of consumable product in milliliters listed by the manufacturer on its invoice shall not be*
111 *liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that*
112 *such consumable product information was incorrect.*

113 **§ 58.1-1021.02:1. Reports by manufacturers of tobacco and vapor products.**

114 Each manufacturer that ships tobacco *or vapor* products to any person located in the Commonwealth
115 shall file a report with the Department no later than the twentieth of each month identifying all such
116 shipments made by the manufacturer during the preceding month. The Department may allow such
117 reports to be filed electronically. Such reports shall identify the names and addresses of the persons
118 within the Commonwealth to whom the shipments were made and the quantities of tobacco *or vapor*
119 products shipped, by type of product and brand. The Tax Commissioner may authorize any manufacturer
120 to file such reports for a period less frequently than monthly when, in the opinion of the Tax

Commissioner, doing so would improve the efficiency of the administration of the tax imposed by this article. If a manufacturer is allowed to file other than on a monthly basis, each such report shall be due no later than the twentieth day of the month that immediately follows the close of the reporting period. Each such report shall contain the same information as required herein for monthly reporting.

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

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

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

The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to retail or wholesale dealers 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.

§ 58.1-1021.04:1. Distributor's license; penalty.

A. No person shall engage in the business of selling or dealing in tobacco *or vapor* products as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business. Each application for a distributor's license shall be accompanied by a fee to be prescribed by the Department. Every application for such license shall be made on a form prescribed by the Department and the following information shall be provided on the application:

1. The name and address of the applicant. If the applicant is a firm, partnership or association, the name and address of each of its members shall be provided. If the applicant is a corporation, the name and address of each of its principal officers shall be provided;

2. The address of the applicant's principal place of business;

3. The place or places where the business to be licensed is to be conducted; and

4. Such other information as the Department may require for the purpose of the administration of this article.

B. A person outside the Commonwealth who ships or transports tobacco *or vapor* products to retailers in the Commonwealth, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the Department, and thereafter be subject to all the provisions of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9, 10, 12 or 14 of Title 13.1 or Chapter 2.1 or 2.2 of Title 50, shall be deemed to have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of service of process relating to any matter or issue involving the person and arising under the provisions of this article.

The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco *or vapor* products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary, on applicants for licensure as tobacco *or vapor* products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company or business trust, if it determines that the principals, managers, and other persons engaged in handling tobacco *or vapor* products at the licensable location of the applicant have been (i) found guilty of any fraud or

misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for a distributor's license to the Department, shall be guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury.

C. Upon receipt of an application in proper form and payment of the required license fee, the Department shall, unless otherwise provided by this article, issue to the applicant a license, which shall permit the licensee to engage in business as a distributor at the place of business shown on the license. Each license, or a copy thereof, shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person. Distributor's licenses issued pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Department in the manner provided herein. The Department may at any time revoke the license issued to any distributor who is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter.

D. The Department shall compile and maintain a current list of licensed distributors. The list shall be updated on a monthly basis, and published on the Department's ~~official Internet~~ website, available to any interested party.

§ 58.1-1021.04:2. Certain records required of distributor; access to premises.

A. Each distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of: (i) tobacco *or vapor* products held, purchased, manufactured, brought in, or caused to be brought in from outside the Commonwealth or shipped or transported to retailers in the Commonwealth; (ii) all sales of tobacco *or vapor* products made; (iii) all tobacco *or vapor* products transferred to other retail outlets owned or controlled by that licensed distributor; and (iv) any records required by the Department.

All books, records and other papers and documents required by this subsection to be kept shall be preserved, in a form prescribed by the Department, for a period of at least three years after the date of the documents or the date of the entries thereof appearing in the records, unless the Department authorizes, in writing, their destruction or disposal at an earlier date.

B. At any time during usual business hours, duly authorized agents or employees of the Department may enter any place of business of a distributor and inspect the premises, the records required to be kept under this article and the tobacco *or vapor* products contained therein, to determine whether all the provisions of this article are being complied with fully. Refusal to permit such inspection by a duly authorized agent or employee of the Department shall be grounds for revocation of the license.

C. Each person who sells tobacco *or vapor* products to persons other than an ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale and all prices. Such person shall preserve legible copies of all such invoices for three years after the date of sale.

D. Each distributor shall procure itemized invoices of all tobacco *and vapor* products purchased. The invoices shall show the name and address of the seller and the date of purchase. The distributor shall preserve a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the Department at the distributor's place of business.

E. Any violation of § 58.1-1021.04:1, 58.1-1021.04:2, 58.1-1021.04:3, or 58.1-1021.04:4 of this article shall be grounds for revocation of the license.

§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco or vapor products; civil penalty.

A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth pursuant to this article to import, transport, or possess, for resale, any tobacco *or vapor* products in the Commonwealth, or under circumstances and conditions that indicate that tobacco *or vapor* products are being imported, transported, or possessed in a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article. Such tobacco *or vapor* products shall be subject to seizure, forfeiture, and destruction by any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco *or vapor* products involved in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale

tobacco *or* vapor products upon which the tax imposed by this article has not been paid shall be required to pay any tax owed pursuant to this article. In addition, if such person imports, transports, or possesses such tobacco *or* vapor products in such a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article, he shall be required to pay a civil penalty of (i) \$2.50 per tobacco *or* vapor product, up to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco *or* vapor product, up to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco *or* vapor product, up to \$50,000, for the third or subsequent violation by the person within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this article, such person shall be required to pay a civil penalty of \$25 per tobacco *or* vapor product, up to \$250,000.

§ 58.1-1021.04:4. Purchase of tobacco or vapor products for resale.

No retail dealer shall purchase tobacco *or* vapor products, for resale to consumers, from any person within or outside the Commonwealth of Virginia, except as follows:

1. A retail dealer purchases from a distributor licensed by the Commonwealth of Virginia.

2. A retail dealer applies for and is granted a license as a distributor, and files returns and maintains records as required of licensed distributors under this article.

§ 58.1-1021.04:5. Tax Commissioner to establish guidelines and rules.

The Tax Commissioner shall establish guidelines and rules, including record keeping requirements, for implementation of the ~~tax taxes~~ on tobacco *and* vapor products under ~~Article 2-1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia this article~~. The establishment of the guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Article 7.

Cigarette and Vapor Products Tax.

§ 58.1-3830. Local cigarette and vapor product taxes not prohibited; use of dual die or stamp to evidence payment of both county, city, or town and state tax on cigarettes.

A. As used in this article, unless the context requires a different meaning:

"Consumable product" means any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

"Vapor product" means any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from nicotine in a solution. "Vapor product" includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any product regulated by the U.S. Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

~~A. B.~~ No provision of Chapter 10 (§ 58.1-1000 et seq.) of ~~this title~~ shall be construed to deprive counties, cities, and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city, or town had such power prior to January 1, 1977. The governing body of any county, city, or town which levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the county, city, or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town, or joint enforcement authority officer and the Department.

C. Any county, city, or town that had the authority prior to January 1, 1977, to impose a tax upon the sale or use of cigarettes may by ordinance impose a tax on the sale or use of a vapor product. The tax shall be based upon the per milliliter content of consumable product in the vapor product at a rate and on such terms as determined by the governing body of the county, city, or town.

~~B. D.~~ Any county cigarette tax *or* vapor product tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town cigarette tax *or* vapor product tax. However, if the governing body of any such town shall provide that a county cigarette tax *or* vapor product tax, as well as the town cigarette tax *or* vapor product tax, shall apply within the limits of such town, then such cigarette tax *or* vapor product tax may be imposed by the county within such town.

§ 58.1-3831. Tax on cigarettes and vapor products in Arlington and Fairfax Counties.

A. Fairfax and Arlington Counties shall have the power to levy tax upon the sale or use of cigarettes. Such tax shall be in such amount and on such terms as the governing body may by ordinances prescribe, not to exceed five cents per pack or the amount levied under state law, whichever is greater.

305 The provisions of *subsections B and D of § 58.1-3830* shall apply to any cigarette tax imposed by such
306 counties, *mutatis mutandis*.

307 *B. Fairfax and Arlington Counties may impose a tax on the sale or use of a vapor product. The tax*
308 *shall be based upon the per milliliter content of consumable product in the vapor product. The tax shall*
309 *be at a rate and on such terms as the governing body by ordinance may prescribe, but shall not exceed*
310 *the rate of the state tax on vapor products imposed under subdivision A 4 of § 58.1-1021.02. The*
311 *provisions of subsection D of § 58.1-3830 shall apply to any vapor products tax imposed by such*
312 *counties, mutatis mutandis.*

313 **§ 58.1-3831.1. Revenues from vapor products tax to fund pre-kindergarten programs.**

314 *The revenues generated from any tax imposed on vapor products shall be used by the county, city, or*
315 *town solely for the purpose of making grant payments to or funding in support of a center-based*
316 *pre-kindergarten program or a preschool program designed for child development and kindergarten*
317 *preparation that is located in the Commonwealth.*

318 **§ 58.1-3832.1. Local ordinances to administer and enforce local taxes on sale or use of vapor**
319 **products.**

320 *A. 1. Any county, city, or town imposing a tax upon the sale or use of vapor products may by*
321 *ordinance provide for the administration and enforcement of any such tax. The ordinance may provide*
322 *for the registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or*
323 *possessing vapor products within or transporting vapor products within or into such taxing jurisdiction*
324 *for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company*
325 *authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the*
326 *average monthly liability of such person. The county, city, or town may revoke any registration if such*
327 *bond is impaired, but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other*
328 *person that has no business location or residence in the county, city, or town and that sells, stores, or*
329 *possesses in the county, city, or town any vapor products shall, by virtue of such sale, storage, or*
330 *possession, submit the person to the legal jurisdiction of the locality and appoint as the person's*
331 *attorney for any service of lawful process such officer or person as may be designated in the local*
332 *ordinance for such purpose. A copy of any process served on the officer or person shall be sent*
333 *forthwith by registered mail to the distributor, wholesaler, vendor, retailer, or other person.*

334 *2. The ordinance may (i) impose a penalty for the late payment of any vapor products tax not to*
335 *exceed 10 percent per month, (ii) impose a penalty for fraud or evasion of such tax not to exceed 50*
336 *percent, and (iii) assess interest not to exceed three quarters of one percent per month, upon any vapor*
337 *products tax found to be overdue and unpaid.*

338 *B. Any county, city, or town imposing a tax upon the sale or use of vapor products may by*
339 *ordinance delegate its administrative and enforcement authority under its vapor products ordinance to*
340 *one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may*
341 *employ such staff and agents and promulgate such rules and regulations as are necessary to administer*
342 *and enforce the vapor products ordinance of the county, city, or town.*

343 **§ 58.1-3840. Certain excise taxes permitted.**

344 *A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any*
345 *city or town having general taxing powers established by charter pursuant to or consistent with the*
346 *provisions of § 15.2-1104 may impose excise taxes on the "consumable product" content of a "vapor*
347 *product" as such terms are defined in § 58.1-3830, cigarettes, admissions, transient room rentals, meals,*
348 *and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid*
349 *by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of*
350 *the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in*
351 *addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service*
352 *charge does not exceed 20% of the sales price; or (iii) food and beverages sold through vending*
353 *machines or on any tangible personal property purchased with food coupons issued by the United States*
354 *Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special*
355 *Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be*
356 *imposed when sold or provided by (a) restaurants, as such term is defined in subdivision 9 a of*
357 *§ 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)*
358 *volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or*
359 *educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and,*
360 *beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of*
361 *meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds*
362 *of which are to be used by such church, religious body or organization exclusively for nonprofit*
363 *educational, charitable, benevolent, or religious purposes; (c) churches that serve meals for their*
364 *members as a regular part of their religious observances; (d) public or private elementary or secondary*
365 *schools, or public or private colleges and universities, to their students or employees; (e) hospitals,*
366 *medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or*

residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and amphitheatres.

~~D. [Expired.] The revenues generated from any tax imposed on vapor products by a city or town shall be used by the city or town solely for the purpose of making grant payments to or funding in support of a center-based pre-kindergarten program or a preschool program designed for child development and kindergarten preparation that is located in the Commonwealth.~~

§ 58.1-3907. Willful failure to collect and account for tax; penalty.

A. Any corporate or partnership officer as defined in § 58.1-3906, or any other person required to collect, account for and pay over any local admission, transient occupancy, food and beverage, daily rental property tax, cigarette, or vapor product taxes administered by the commissioner of the revenue or other authorized officer, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

For purposes of this section, "vapor product" means the same as that term is defined in § 58.1-3830.

B. Any person who willfully utilizes a device or software to falsify the electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect any local tax liability shall, in addition to any other penalties provided by law, be guilty of a Class 1 misdemeanor.

C. In addition to the criminal penalty provided in subsection B and any other civil or criminal penalty provided in this title, any person violating subsection B shall pay a civil penalty of \$20,000, to be assessed by the commissioner of the revenue and collected by the treasurer as other local taxes are collected and deposited into the treasury of the political subdivision of the Commonwealth served by the treasurer.

D. Any criminal case brought pursuant to this section may be prosecuted by either the attorney for the Commonwealth or other attorney charged with the responsibility for prosecution of a violation of local ordinances.

2. That the provisions of this act shall become effective on January 1, 2016.