

15102579D

SENATE BILL NO. 1230

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact §§ 4.1-103, 4.1-225, 58.1-1007, and 58.1-1021.04:3 of the Code of Virginia; to amend the Code of Virginia by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-612; and to repeal §§ 4.1-103.01, 58.1-1021.04:1, 58.1-1021.04:2, and 58.1-1021.04:4 of the Code of Virginia, relating to the powers of the Alcoholic Beverage Control Board; regulation of the distribution and retail sale of tobacco products; penalty.

Patrons—Reeves, Howell and Norment

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-103, 4.1-225, 58.1-1007, and 58.1-1021.04:3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 4.1 a chapter numbered 6, consisting of sections numbered 4.1-600 through 4.1-612, as follows:

§ 4.1-103. General powers of Board.

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

6. Lease, occupy and improve any land or building required for the purposes of this title;

7. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;

10. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

12. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

13. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of this chapter;

14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

15. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

INTRODUCED

SB1230

17. Establish minimum food sale requirements for all retail licensees; ~~and~~
18. *Administer and enforce the provisions of Chapter 6 (§ 4.1-600 et seq.); and*
19. Do all acts necessary or advisable to carry out the purposes of this title.

§ 4.1-225. Grounds for which Board may suspend or revoke licenses.

The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Has misrepresented a material fact in applying to the Board for such license;

b. Within the five years immediately preceding the date of the hearing held in accordance with § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;

c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;

d. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;

e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;

f. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;

g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

h. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;

i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;

j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;

k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;

l. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;

m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;

o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (~~§ 18.2-247 et seq.~~) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein; or

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et

seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety.

2. The place occupied by the licensee:

a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

7. Any other cause authorized by this title Chapters 1 (§ 4.1-100 et seq.), 2 (§ 4.1-200 et seq.), 3 (§ 4.1-300 et seq.), 4 (§ 4.1-400 et seq.), or 5 (§ 4.1-500 et seq.).

CHAPTER 6. TOBACCO SALES.

§ 4.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. "Cigarette" includes "roll-your-own" tobacco, which means any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"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.

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

1. "Loose leaf tobacco half pound-unit" means a unit, pouch, or package sized for consumer use containing at least four ounces but not more than eight 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 eight 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

182 individual package.

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

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

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

192 "Retail dealer" includes every person, other than a distributor, who sells or offers for sale any
193 tobacco products and who is licensed in accordance with this chapter by the Board.

194 "Retail sale" or "sale at retail" includes all sales except sales by distributors to retail dealers or
195 other distributors for resale.

196 "Tobacco product" or "tobacco products" means (i) cigarettes; (ii) "cigar" as defined in § 5702(a) of
197 the Internal Revenue Code, and as such section may be amended; (iii) "smokeless tobacco" as defined in
198 § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iv) "pipe tobacco"
199 as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco
200 products" includes loose leaf tobacco.

201 **§ 4.1-601. Authority of Board relating to the distribution and sale of tobacco products; regulations**
202 **of the Board; right to certain information of Tax Commissioner; penalty.**

203 A. The Board shall have the power to:

204 1. Control the distribution and sale of tobacco products;

205 2. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
206 production of records, memoranda, papers, and other documents before the Board or any agent of the
207 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
208 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take
209 testimony thereunder, and make summary decisions, subject to final decision by the Board, on
210 application of any party aggrieved;

211 3. Grant, suspend, and revoke licenses for the distribution or sale of tobacco products;

212 4. Promulgate reasonable regulations, not inconsistent with this chapter or the general laws of the
213 Commonwealth, that it deems necessary to carry out the provisions of this chapter and to prevent the
214 illegal distribution and sale of tobacco products. The Board may amend or repeal such regulations.
215 Such regulations shall be promulgated, amended, or repealed in accordance with the Administrative
216 Process Act (§ 2.2-4000 et seq.) and shall have the effect of law; and

217 5. Do all acts necessary or advisable to carry out the purposes of this chapter.

218 B. No person shall (i) fail or refuse to obey any subpoena issued by the Board, any Board member,
219 or any agent authorized by the Board to issue such subpoena or (ii) hinder the orderly conduct and
220 decorum of any hearing held and conducted by the Board, any Board member, or any agent authorized
221 by the Board to hold and conduct such hearing. Any person convicted of a violation of this subsection is
222 guilty of a Class 1 misdemeanor.

223 C. Notwithstanding the provisions of § 58.1-3 or any other provision of law, the Tax Commissioner
224 shall provide to the Board the name, address, and other identifying information within the
225 Commissioner's possession of all wholesale cigarette dealers as defined in § 58.1-1000.

226 All invoices, books, papers, or other memoranda and records concerning the sale of cigarettes
227 maintained by wholesale cigarette dealers pursuant to § 58.1-1007 shall be subject to inspection during
228 normal business hours by special agents of the Board. Any person who, upon request by a special
229 agent, unreasonably fails or refuses to allow an inspection of the records authorized by this subsection
230 is guilty of a Class 2 misdemeanor.

231 The Board may use the information obtained from the Tax Commissioner or by the inspections
232 authorized by this subsection only for the purpose of creating and maintaining a list of retail dealers to
233 facilitate enforcement of the laws governing the sale of tobacco products. Neither the Board nor any
234 special agent shall divulge any information provided by the Tax Commissioner or obtained in the
235 performance of the inspections authorized by this subsection to anyone other than to another special
236 agent. Any person violating the provisions of this subsection is guilty of a Class 2 misdemeanor.

237 **§ 4.1-602. Tobacco product licenses.**

238 The Board may grant the following licenses relating to tobacco products:

239 1. Distributor's cigarette license;

240 2. Distributor's tobacco products other than cigarette license; and

241 3. Retail dealer's tobacco products license.

242 **§ 4.1-603. To whom privileges conferred by licenses extend; separate license for each place of**
243 **business.**

A. The privilege of any licensee to sell or distribute tobacco products shall extend to the licensee and to all agents or employees of the licensee for the purpose of selling or distributing tobacco products under such license. The licensee may be held liable for any violation of this chapter or any Board regulation committed by such agents or employees in connection with their employment.

B. Each license granted by the Board shall designate the place where the business of the licensee will be carried on. A separate license shall be required for each separate place of business.

C. No license shall be transferable from one person to another or from one location to another. The Board may permit a licensee to amend the classification of an existing license without reapplying for the license if the effect of the amendment is to reduce materially the privileges of an existing license. However, if (i) the Board determines that the amendment is a device to evade the provisions of this chapter, (ii) a majority of the corporate stock of a retail licensee is sold to a new entity, or (iii) there is a change of business at the premises of a retail dealer's, the Board may, within 30 days of receipt of written notice by the licensee of a change in ownership or a change of business, require the licensee to comply with any or all of the requirements of § 4.1-604 or 4.1-605. If the Board fails to exercise its authority within the 30-day period, the licensee shall not be required to reapply for a license. The licensee shall submit such written notice to the Secretary of the Board.

D. Each license shall be posted in a location conspicuous to the public at the place where the licensee carries on the business for which the license is granted.

E. The privileges conferred by any license granted by the Board shall continue until the last day of the twelfth month of the third year or the last day of the designated month of expiration, except the license may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a license, by operation of law, by voluntary surrender, or by order of the Board.

F. The Board may permit a licensee who fails to pay:

1. The required license tax covering the continuation or reissuance of his license by midnight of the fifteenth day of the twelfth month of the third year or of the designated month of expiration, whichever is applicable, to pay the tax in lieu of reapplying for a new license, provided payment of the tax is made within 30 days following that date and is accompanied by a civil penalty of \$25 or 10 percent of such tax, whichever is greater; and

2. The tax and civil penalty pursuant to subdivision 1 to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within 45 days following the 30 days specified in subdivision 1 and is accompanied by a civil penalty of \$100 or 25 percent of such tax, whichever is greater.

G. Such civil penalties collected by the Board shall be deposited in accordance with § 4.1-116.

§ 4.1-604. Distributor's license required; penalty.

A. No person shall engage in the business of selling or dealing in tobacco products as a distributor in the Commonwealth without first having obtained a license from the Board 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 Board. Every application for such license shall be made on a form prescribed by the Board 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 Board may require for the purpose of the administration of this chapter.

B. A person outside the Commonwealth who ships or transports tobacco products to retail dealers in the Commonwealth, to be sold by those retailers, may make application for a license as a distributor, be granted such a license by the Board, and thereafter be subject to all the provisions of this chapter. 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 (§ 13.1-601 et seq.), 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) 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 chapter.

The Board 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 products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Board deems a national criminal records search necessary, on applicants for licensure as tobacco products distributors. However, the Board may waive the requirement for a

305 criminal history records search and completed personal data form for officers, directors, nonmanaging
306 members, or limited partners of any applicant corporation, limited liability company, or limited
307 partnership, (i) for good cause shown or (ii) where the applicant holds a valid license under Chapter 2
308 (§ 4.1-200 et seq.). The Board may refuse to issue a distributor's license or may suspend, revoke, or
309 refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability
310 company, or business trust if it determines that the principals, managers, and other persons engaged in
311 handling tobacco products at the licensable location of the applicant have been (i) found guilty of any
312 fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny,
313 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii)
314 convicted of a felony. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a
315 material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or
316 representation in any application for a distributor's license to the Board is guilty of a Class 1
317 misdemeanor. The Board may establish an application or renewal fee not to exceed \$750 to be retained
318 by the Board to be applied to the administrative and other costs of processing distributor's license
319 applications, conducting background investigations, and issuing distributor's licenses. Any amount
320 collected pursuant to this section in excess of such costs as of June 30 in even-numbered years shall be
321 reported to the State Treasurer and deposited into the state treasury.

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

331 D. The Board shall compile and maintain a current list of licensed distributors. The list shall be
332 updated on a monthly basis and published on the Board's website.

333 **§ 4.1-605. Retail dealer's license required; penalty.**

334 A. No person shall engage in the business of selling tobacco products in the Commonwealth without
335 first having obtained a license from the Board for each location or place of business. Each application
336 for a retail dealer's license shall be accompanied by a fee to be prescribed by the Board. Every
337 application for such license shall be made on a form prescribed by the Board and the following
338 information shall be provided on the application:

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

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

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

344 4. Such other information as the Board may require for the purpose of the administration of this
345 chapter.

346 B. Once a license is granted pursuant to this section, such person shall be entitled to act as a retail
347 dealer and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.),
348 10 (§ 13.1-801 et seq.), 12 (§ 13.1-1000 et seq.), or 14 (§ 13.1-1200 et seq.) of Title 13.1 or Chapter
349 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have appointed the
350 Clerk of the State Corporation Commission as the person's agent for the purpose of service of process
351 relating to any matter or issue involving the person and arising under the provisions of this chapter.

352 The Board shall conduct a background investigation, to include a Virginia criminal history records
353 search and fingerprints of the applicant, or the responsible principals, managers, and other persons
354 engaged in handling tobacco products at the licensable locations, that shall be submitted to the Federal
355 Bureau of Investigation if the Board deems a national criminal records search necessary, on applicants
356 for licensure as tobacco products retail dealers. However, the Board may waive the requirement for a
357 criminal history records search and completed personal data form for officers, directors, nonmanaging
358 members, or limited partners of any applicant corporation, limited liability company, or limited
359 partnership, (i) for good cause shown or (ii) where the applicant holds a valid license under Chapter 2
360 (§ 4.1-200 et seq.). The Board may refuse to grant a retail dealer's license or may suspend, revoke, or
361 refuse to renew a retail dealer's license granted to any person, partnership, corporation, limited liability
362 company, or business trust if it determines that the principals, managers, and other persons engaged in
363 handling tobacco products at the licensable location of the applicant have been (i) found guilty of any
364 fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny,
365 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii)
366 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 retail dealer's license to the Board is guilty of a Class 1 misdemeanor. The Board may establish an application or renewal fee not to exceed \$500 to be retained by the Board to be applied to the administrative and other costs of processing retail dealer's license applications, conducting background investigations, and granting retail dealer'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 Board shall, unless otherwise provided by this chapter, grant to the applicant a license, which shall permit the licensee to engage in business as a retail dealer 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. Retailer's licenses granted pursuant to this section shall be valid for a period of three years from the date of issue unless revoked by the Board in the manner provided herein. The Board may at any time revoke the license granted to any retail dealer who is found guilty of violating or noncompliance with any of the provisions of this chapter, or any of the Board regulations adopted and promulgated under authority of this chapter.

D. The Board shall compile and maintain a current list of retail dealers. The list shall be updated on a monthly basis and published on the Board's website.

§ 4.1-606. Notice and hearings for refusal to grant licenses; Administrative Process Act; exceptions.

A. The action of the Board in granting or in refusing to grant any license shall be subject to review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), except as provided in subsections B and C. Review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

B. The Board may refuse a hearing on any application for the granting of any retail or wholesale license, provided such:

1. License for the applicant has been refused or revoked within a period of 12 months;
2. License for any premises has been refused or revoked at that location within a period of 12 months; or

3. Applicant, within a period of 12 months immediately preceding, has permitted a license granted by the Board to expire for nonpayment of license tax, and at the time of expiration of such license, there was a pending and unadjudicated charge, either before the Board or in any court, against the licensee alleging a violation of this chapter.

C. If an applicant has permitted a license to expire for nonpayment of license tax, and at the time of expiration there remained unexecuted any period of suspension imposed upon the licensee by the Board, the Board may refuse a hearing on an application for a new license until after the date on which the suspension period would have been executed had the license not been permitted to expire.

§ 4.1-607. Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Before the Board may suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § 2.2-4020 of the Administrative Process Act (§ 2.2-4000 et seq.).

Notwithstanding the provisions of § 2.2-4022, the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § 4.1-601 shall provide for the production of the documents sought within 10 working days, notwithstanding anything to the contrary in § 4.1-103.

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court

428 pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

429 B. In suspending any license the Board may impose, as a condition precedent to the removal of such
430 suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in
431 investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose
432 a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation, and \$5,000
433 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the
434 violation involved selling tobacco products to a person prohibited from purchasing or possessing
435 tobacco products, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and
436 \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both.

437 C. Following notice to the licensee of a hearing that may result in the suspension or revocation of
438 his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not
439 exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation.

440 D. The Board shall, by regulation:

441 1. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of
442 suspension may be accepted for a first offense occurring within three years immediately preceding the
443 date of the violation;

444 2. Provide for a reduction in the length of any suspension and a reduction in the amount of any civil
445 penalty for any retail dealer where the licensee can demonstrate that it provided to its employees
446 tobacco product seller training certified in advance by the Board;

447 3. Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a
448 license and the civil charge acceptable in lieu of such suspension; and

449 4. Establish a schedule of offenses for which any penalty may be waived upon a showing that the
450 licensee has had no prior violations within five years immediately preceding the date of the violation.
451 No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this
452 chapter, Board regulations, or any statute governing the distribution or sale of tobacco products.

453 E. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of
454 subsection D shall be advised of the option of (i) accepting the suspension authorized by the Board's
455 schedule, (ii) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (iii)
456 proceeding to a hearing.

457 **§ 4.1-608. Suspension or revocation; disposition of tobacco products on hand; termination.**

458 A. Tobacco products owned by or in possession of, or for sale by, any licensee at the time the
459 license of such person is suspended or revoked may be disposed of as follows:

460 1. Sold to persons in the Commonwealth licensed to sell tobacco products upon permits granted by
461 the Board and conditions specified by the Board; or

462 2. Sold to persons outside the Commonwealth for resale outside the Commonwealth upon permits
463 granted by the Board.

464 B. Tobacco products owned and in possession of, or either, or for sale by, any licensee at the time
465 the license of such person is suspended or revoked may be sold to any person authorized to purchase
466 the same for resale upon permits granted by the Board and upon payment of any tax due thereon.

467 C. All tobacco products owned by or in possession of any person whose license is suspended or
468 revoked shall be disposed of by such person in accordance with the provisions of this section within 60
469 days from the date of such suspension or revocation.

470 D. Tobacco products owned by, or in possession of, or for sale by persons whose licenses have been
471 terminated other than by suspension or revocation may be disposed of in accordance with subsection A
472 or B within such time as the Board deems proper. Such period shall not be less than 60 days.

473 E. All tobacco products owned by or remaining in the possession of any person described in
474 subsection A, B, or D after the expiration of such period shall be deemed contraband and forfeited to
475 the Commonwealth in accordance with the provisions of § 4.1-338.

476 **§ 4.1-609. Taxes on licenses; refunds.**

477 A. The license fee granted under this chapter shall be as follows:

478 1. Cigarette distributor license, \$700;

479 2. Distributor license for tobacco products other than cigarettes, \$500; and

480 3. Retail dealer license for tobacco products, \$300.

481 B. Nothing in this chapter shall exempt any licensee from any state merchant's license or state
482 restaurant license or any other state tax.

483 C. The Board may correct erroneous assessments made by it against any person and make refunds of
484 any amounts collected pursuant to erroneous assessments, or collected as taxes on licenses, which are
485 subsequently refused or application therefor withdrawn, and allow credit for any license taxes paid by
486 any licensee for any license that is subsequently merged or changed into another license during the
487 same license term. No refund shall be made of any such amount, however, unless made within three
488 years from the date of collection of the same.

489 D. In any case where a licensee has changed its name or form of organization during a license term

without any change being made in its ownership, and because of such change is required to pay an additional license tax for such year, the Board shall refund to such licensee the amount of such tax so paid in excess of the required license tax for such year.

E. The Board shall make refunds, prorated according to a schedule of its prescription, to licensees of license taxes paid pursuant to subsection A, if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon.

F. Any amount required to be refunded under this section shall be paid by the State Treasurer out of moneys appropriated to the Board and in the manner prescribed in § 4.1-116.

§ 4.1-610. 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 products held, purchased, manufactured, brought in or caused to be brought in from outside the Commonwealth, or shipped or transported to retail dealers in the Commonwealth; (ii) all sales of tobacco products made; (iii) all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor; and (iv) any records required by the Board.

All books, records, and other papers and documents required by this subsection to be kept shall be preserved, in a form prescribed by the Board, 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 Board 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 Board may enter any place of business of a distributor and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether all the provisions of this chapter are being complied with fully. Refusal to permit such inspection by a special agent or employee of the Board shall be grounds for revocation of the license.

C. Each person who sells tobacco products to persons licensed under this chapter to sell tobacco products at retail 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 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 special agents or employees of the Board at the distributor's place of business.

E. Any violation of this section or § 4.1-604 or 58.1-1021.04:3 shall be grounds for revocation of the license.

§ 4.1-611. Certain records required of retail dealers; access to premises.

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

All books, records, and other papers and documents required by this subsection to be kept shall be preserved, in a form prescribed by the Board, 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 Board 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 Board may enter any place of business of a retail dealer and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether all the provisions of this chapter are being complied with fully. Refusal to permit such inspection by a special agent or employee of the Board shall be grounds for revocation of the license.

C. Each retail dealer shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retail dealer shall preserve a legible copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by special agents or employees of the Board at the retail dealer's place of business.

D. Any violation of this section or § 4.1-605 or 4.1-612 shall be grounds for revocation of the license.

§ 4.1-612. Purchase of tobacco products for resale.

No retail dealer shall purchase tobacco 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 Board.
2. A retail dealer (i) applies for and is granted a license as a distributor and files returns and

551 *maintains records as required of licensed distributors under this chapter and Board regulations or (ii)*
552 *purchases from another retail dealer.*

553 **§ 58.1-1007. Documents touching purchase, sale, etc., of cigarettes to be kept for three years,**
554 **subject to inspection; penalty.**

555 It shall be the duty of every person receiving, storing, selling, handling, or transporting cigarettes in
556 any manner whatsoever, to preserve all invoices, books, papers, cancelled checks, or other documents
557 relating to the purchase, sale, exchange, receipt, or transportation of all cigarettes for a period of three
558 years. All such invoices, books, papers, cancelled checks, or other memoranda and records shall be
559 subject to audit and inspection *at all times* by any duly authorized representative of the Department ~~at~~
560 ~~all times or special agents or employees of the Alcoholic Beverage Control Board.~~ Any person who fails
561 or refuses to keep and preserve the records as ~~herein~~ required ~~shall be by this section is~~ guilty of a Class
562 2 misdemeanor. Any person who, upon request by a duly authorized agent of the Department *who is*
563 *entitled to audit and inspect such records,* fails or refuses to allow an audit or inspection of records as
564 ~~hereinafter~~ provided; *in this section* shall have his stamping permit suspended until such time as the
565 Department *audit or inspection* is allowed to ~~audit or inspect the records.~~ The Department may impose a
566 penalty of \$1,000 for each day that the person fails or refuses to allow an audit or inspection of the
567 records. The penalty shall be assessed and collected by the Department as other taxes are collected.

568 **§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco products; civil**
569 **penalty.**

570 A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth
571 pursuant to ~~this article~~ *Chapter 6 (§ 4.1-600 et seq.) of Title 4.1* to import, transport, or possess, for
572 resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate
573 that tobacco products are being imported, transported, or possessed in a manner as to knowingly and
574 intentionally evade or attempt to evade the tax imposed by this article. Such tobacco products shall be
575 subject to seizure, forfeiture, and destruction by any law-enforcement officer of the Commonwealth. All
576 fixtures, equipment, materials, and personal property used in substantial connection with the sale or
577 possession of tobacco products involved in a knowing and intentional violation of this article shall be
578 subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et
579 seq.) of Title 19.2, applied mutatis mutandis.

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

591 **2. That §§ 4.1-103.01, 58.1-1021.04:1, 58.1-1021.04:2, and 58.1-1021.04:4 of the Code of Virginia**
592 **are repealed.**

593 **3. That any rules or guidelines established by the Tax Commissioner in accordance with**
594 **§ 58.1-1021.04:5 of the Code of Virginia that are in effect as of July 1, 2015, and that pertain to**
595 **the subject of this act, shall remain in full force and effect until altered, amended, or rescinded by**
596 **the Alcoholic Beverage Control Board.**

597 **4. That any licenses issued by the Department of Taxation in accordance with Article 2.1**
598 **(§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia before July 1, 2015,**
599 **shall remain in full force and effect until the expiration of such license, at which time any renewal**
600 **of such license shall be made in accordance with this act.**

601 **5. That the Governor may transfer an appropriation or any portion thereof within a state agency**
602 **established, abolished, or otherwise affected by this act or from one such agency to another, to**
603 **support the changes in organization or responsibility resulting from or required by the provisions**
604 **of this act.**