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SENATE BILL NO. 1230

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 30, 2015)

(Patron Prior to Substitute—Senator Reeves)

A *BILL to amend and reenact §§ 3.2-4204, 4.1-103, 4.1-225, 18.2-246.6, 58.1-1000, 58.1-1003, 58.1-1006, 58.1-1008, 58.1-1009, 58.1-1010, 58.1-1012, 58.1-1013, 58.1-1015, 58.1-1017, 58.1-1017.1, 58.1-1021.01, 58.1-1021.04:3, and 58.1-1035 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 4.1-614, and by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.3; and to repeal §§ 4.1-103.01, 58.1-1007, 58.1-1011, 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.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4204, 4.1-103, 4.1-225, 18.2-246.6, 58.1-1000, 58.1-1003, 58.1-1006, 58.1-1008, 58.1-1009, 58.1-1010, 58.1-1012, 58.1-1013, 58.1-1015, 58.1-1017, 58.1-1017.1, 58.1-1021.01, 58.1-1021.04:3, and 58.1-1035 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 4.1-614, and by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.3 as follows:

§ 3.2-4204. Definitions.

As used in this article:

"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

"Commissioner" means the Tax Commissioner of the Department of Taxation.

"Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

"Participating manufacturer" shall have the meaning provided in section II (jj) of the Master Settlement Agreement.

"Stamping agent" means (i) a person who is authorized by the Tax Commissioner pursuant to ~~§ 58.1-1011~~ to affix Virginia tax stamps to packages, packs, cartons, or other containers of cigarettes duly licensed to distribute cigarettes in the Commonwealth by the Alcoholic Beverage Control Board pursuant to § 4.1-604; or (ii) any person who is required to pay the excise tax imposed on cigarettes pursuant to § 58.1-1001.

Terms defined in § 3.2-4200 shall have the same meaning when used in this article.

§ 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;

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

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

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

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

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

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

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

81 17. Establish minimum food sale requirements for all retail licensees; ~~and~~

82 18. *Administer and enforce the provisions of Chapter 6 (§ 4.1-600 et seq.); and*

83 19. Do all acts necessary or advisable to carry out the purposes of this title.

84 **§ 4.1-225. Grounds for which Board may suspend or revoke licenses.**

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

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

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

93 b. Within the five years immediately preceding the date of the hearing held in accordance with
94 § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the
95 Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States,
96 applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated
97 any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act
98 (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or
99 refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply
100 with any of the conditions or restrictions of the license granted by the Board;

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

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

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

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

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

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

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

119 j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person
120 whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii)
121 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 18.2-265.1 *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

183 its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette
184 described in clause (i) of this definition. "Cigarette" includes "roll-your-own" tobacco, which means any
185 tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be
186 offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition
187 of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

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

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

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

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

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

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

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

214 "Pack" means a package containing either 20 or 25 cigarettes.

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

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

219 "Stamping agent" shall have the same meaning as provided in § 3.2-4204. For the purposes of
220 provisions relating to "roll-your-own" tobacco, "stamping agent" shall include "distributor."

221 "Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid
222 and shall be officially designated as Virginia revenue stamps. The Board may provide for the use of any
223 type of stamp which will effectuate the purposes of this chapter including decalomania and metering
224 devices.

225 "Tobacco product" or "tobacco products" means (i) cigarettes; (ii) "cigar" as defined in § 5702(a) of
226 the Internal Revenue Code, and as such section may be amended; (iii) "smokeless tobacco" as defined in
227 § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iv) "pipe tobacco"
228 as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco
229 products" includes loose leaf tobacco.

230 **§ 4.1-601. Authority of Board relating to the distribution and sale of tobacco products; regulations**
231 **of the Board; exchange of certain information with Tax Commissioner; penalty.**

232 A. The Board shall have the power to:

233 1. Control the distribution and sale of tobacco products, including the investigation and enforcement
234 of unlawful activity relating to the distribution and sale of tobacco products;

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

241 3. Grant, suspend, and revoke (i) licenses for the distribution or sale of tobacco products and (ii)
242 permits granted under § 4.1-606;

243 4. Promulgate reasonable regulations, not inconsistent with this chapter or the general laws of the
244 Commonwealth, that it deems necessary to carry out the provisions of this chapter and to prevent the

illegal distribution and sale of tobacco products. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law;

5. Enforce the provisions of §§ 58.1-1017, 58.1-1017.1, and 58.1-1017.3; and

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

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

C. Notwithstanding the provisions of § 58.1-3 or any other provision of law, the Board and the Tax Commissioner may exchange information in order to facilitate the enforcement of the laws governing the sale and taxation of cigarettes and tobacco products, including the name, address, and other identifying information of wholesale dealers and stamping agents.

All invoices, books, papers, or other memoranda and records concerning the sale of cigarettes maintained by wholesale cigarette dealers pursuant to § 4.1-611 shall be subject to inspection at all times by special agents of the Board. Any person who, upon request by a special agent, unreasonably fails or refuses to allow an inspection of the records authorized by this subsection is guilty of a Class 2 misdemeanor.

Neither the Board nor any special agent shall divulge any information provided by the Tax Commissioner or obtained in the performance of the inspections authorized by this subsection to anyone other than to another special agent. Any person violating the provisions of this subsection is guilty of a Class 2 misdemeanor.

§ 4.1-602. Tobacco product licenses.

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

1. Tobacco products distributor's license; and

2. Tobacco products retail dealer's license.

§ 4.1-603. To whom privileges conferred by licenses extend; separate license for each place of 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 grant licenses for one year or for multiple years, not to exceed three years, based on the fees set forth in § 4.1-610. Qualification for a multiyear license shall be determined on the basis of criteria established by the Board. Fees for multiyear licenses shall not be refundable except as provided in § 4.1-610. The Board may provide a discount for two-year or three-year licenses, not to exceed five percent of the applicable license fee, which extends for one fiscal year and shall not be altered or rescinded during such period.

G. 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

306 made within 30 days following that date and is accompanied by a civil penalty of \$25 or 10 percent of
307 such tax, whichever is greater; and

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

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

312 **§ 4.1-604. Distributor's license required; penalty.**

313 A. No person shall engage in the business of selling or dealing in tobacco products as a distributor
314 in the Commonwealth without first having obtained a license from the Board for each location or place
315 of business. Each application for a distributor's license shall be accompanied by an application fee in
316 accordance with subsection B. Every application for such license shall be made on a form prescribed by
317 the Board and the following information shall be provided on the application:

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

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

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

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

325 B. A person outside the Commonwealth who ships or transports tobacco products to retail dealers in
326 the Commonwealth, to be sold by those retailers, may make application for a license as a distributor, be
327 granted such a license by the Board, and thereafter be subject to all the provisions of this chapter.
328 Once a license is granted pursuant to this section, such person shall be entitled to act as a licensed
329 distributor and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et
330 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
331 Chapter 2.1 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have
332 appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of
333 service of process relating to any matter or issue involving the person and arising under the provisions
334 of this chapter.

335 Prior to granting a distributor's license, the Board shall conduct a background investigation, to
336 include a Virginia criminal history records search of the applicant, or the responsible principals,
337 managers, and other persons as designated by the applicant that are engaged in handling tobacco
338 products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the
339 Board deems a national criminal records search necessary, on applicants for licensure as tobacco
340 products distributors. However, the Board may waive the requirement for a criminal history records
341 search and completed personal data form for officers, directors, nonmanaging members, or limited
342 partners of any applicant corporation, limited liability company, or limited partnership, where the
343 applicant holds a valid license under Chapter 2 (§ 4.1-200 et seq.). The Board may refuse to issue a
344 distributor's license or may suspend, revoke, or refuse to renew a distributor's license issued to any
345 person, partnership, corporation, limited liability company, or business trust if it determines that the
346 principals, managers, and other persons engaged in handling tobacco products at the licensable location
347 of the applicant (i) have been found guilty of any fraud or misrepresentation in any connection; (ii)
348 have been convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion,
349 gambling, perjury, bribery, treason, or racketeering; (iii) have been convicted of a felony; or (iv) are
350 ineligible to be an authorized holder as defined in § 58.1-1000. Anyone who knowingly and willfully
351 falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious,
352 or fraudulent statement or representation in any application for a distributor's license to the Board is
353 guilty of a Class 1 misdemeanor. The Board may establish an application fee not to exceed \$65 to be
354 retained by the Board to be applied to the administrative and other costs of processing distributor's
355 license applications, conducting background investigations, and issuing distributor's licenses.

356 C. Upon receipt of an application in proper form, payment of the required license fee, and after
357 receipt of the results of the background investigation, the Board shall, unless otherwise provided by this
358 chapter, grant to the applicant a license, which shall permit the licensee to engage in business as a
359 distributor at the place of business shown on the license. Each license, or a copy thereof, shall be
360 prominently displayed on the premises covered by the license. No license shall be transferable to any
361 other person. Distributor's licenses granted pursuant to this section shall be valid for a period of three
362 years from the date of issue unless revoked by the Board in the manner provided herein. The Board may
363 at any time revoke the license granted to any distributor who is found guilty of violating or
364 noncompliance with any of the provisions of this chapter, any of the Board regulations adopted under
365 authority of this chapter, or the provisions of Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1.

366 D. If the applicant for a distributor's license holds a valid license granted by the Board pursuant to
367 § 4.1-126 or Chapter 2 (§ 4.1-200 et seq.) of this title, no additional application or renewal fee shall be

imposed by the Board.

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

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

A. No person shall engage in the business of selling tobacco products in the Commonwealth without first having obtained a license from the Board for each location or place of business. Each application for a retail dealer's license shall be accompanied by an application fee in accordance with subsection B. 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. Once a license is granted pursuant to this section, such person shall be entitled to act as a retail dealer 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.

Prior to granting a retail dealer's license, the Board shall conduct a background investigation, to include a Virginia criminal history records search of the applicant, or the responsible principals, managers, and other persons as designated by the applicant that are 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 retail dealers. However, the Board may waive the requirement for a criminal history records search and completed personal data form for officers, directors, nonmanaging members, or limited partners of any applicant corporation, limited liability company, or limited partnership, where the applicant holds a valid license under Chapter 2 (§ 4.1-200 et seq.). The Board may refuse to grant a retail dealer's license or may suspend, revoke, or refuse to renew a retail dealer's license granted 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 products at the licensable location of the applicant (i) have been found guilty of any fraud or misrepresentation in any connection; (ii) have been convicted of robbery, extortion, burglary, perjury, bribery, treason, or racketeering; (iii) have been convicted of a felony; or (iv) are ineligible to be an authorized holder as defined in § 58.1-1000. 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 fee not to exceed \$65 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.

C. Upon receipt of an application in proper form, payment of the required license fee, and after receipt of the results of the background investigation, 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 one year 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, any of the Board regulations adopted and promulgated under authority of this chapter, or the provisions of Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1.

D. If the applicant for a retail dealer's license holds a valid license granted by the Board pursuant to § 4.1-126 or Chapter 2 (§ 4.1-200 et seq.), no additional application or renewal fee shall be imposed by the Board.

E. 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. Qualification for permit to affix Virginia revenue stamps; penalty.

A. Only manufacturers, distributors, and retail dealers may be qualify as stamping agents. It shall

be unlawful for any manufacturer to purchase, possess, or affix Virginia revenue stamps without first obtaining a permit to do so from the Board. No permit shall be required of any person licensed by the Board in accordance with this chapter as a tobacco products distributor or retail dealer. Every manufacturer who desires to qualify as a stamping agent with the Board shall make application to the Board on forms prescribed for this purpose, which shall be supplied upon request. The application forms shall (i) require such information relative to the nature of business engaged in by the applicant as the Board deems necessary to the qualifying of the applicant as a stamping agent and (ii) be accompanied by an application fee of \$750.

B. The Board shall conduct a background investigation, to include a Virginia criminal history records search of the applicant, or its responsible principals, managers, and other persons engaged in handling and stamping cigarettes at the locations to be covered by the permit, that shall be submitted to the Federal Bureau of Investigation if the Board determines a national criminal records search is necessary, on applicants for a permit as cigarette tax stamping agents. The Board may refuse to issue a stamping permit or may suspend, revoke, or refuse to renew a stamping permit issued to any manufacturer, if it determines that the manufacturer's principals, managers, and other persons engaged in handling and stamping cigarettes at the locations covered by the permit 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, (iii) convicted of a felony, or (iv) are ineligible to be an authorized holder as defined in § 58.1-1000. 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 stamping permit to the Board is guilty of a Class 1 misdemeanor. The fee for the renewal of a permit shall be \$750. The application and renewal fee shall be retained by the Board and applied to the administrative and other costs of processing stamping agent applications, conducting background investigations, and issuing stamping permits. If the Board, after review of his application and receipt of the results of a background investigation, believes the manufacturer to be qualified, the Board shall issue to a permit qualifying such manufacturer as a stamping agent and he shall be allowed the discount on purchases of Virginia revenue stamps as set out in Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 for stamping agents purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia revenue stamps, and if the applicant qualifies as a distributor, that shall be so noted on the permit issued by the Board. Permits issued 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 in this chapter. The Department of Taxation shall not sell Virginia revenue stamps to any person or entity unless and until the Board has issued that person or entity a permit to affix Virginia revenue stamps.

C. The Board may promulgate regulations governing the issuance, suspension, and revocation of stamping agent permits. The Board may at any time revoke the permit issued to any stamping agent who is not in compliance with any of the provisions of this chapter or Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 or any of the regulations of the Board adopted in accordance with this chapter.

§ 4.1-607. 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.

§ 4.1-608. 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 pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed the amount specified in subsection D of § 18.2-371.2.

C. Following notice to the licensee of a hearing that may result in the suspension or revocation of his license, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation. Any civil penalties collected by the Board shall be deposited in accordance with § 4.1-116.

D. The Board shall, by regulation:

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

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

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

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

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

§ 4.1-609. Suspension or revocation; disposition of tobacco products on hand; termination.

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

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

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

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

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

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

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

§ 4.1-610. Taxes on licenses; refunds.

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

1. Tobacco products distributor's license, \$700;

2. Tobacco products retail dealer's license, \$100.

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

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

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.

§ 4.1-611. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection; penalty.

It shall be the duty of every person receiving, storing, selling, handling or transporting cigarettes in any manner whatsoever, to preserve all invoices, books, papers, cancelled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years. All such invoices, books, papers, cancelled checks or other memoranda and records shall be subject to audit and inspection at all times by any duly authorized representative of the Board, the Department Taxation, the Office of the Attorney General, or a local cigarette tax administrative or enforcement official. Any person who fails or refuses to keep and preserve the records as required by this section shall be guilty of a Class 2 misdemeanor. Any person who, upon request by a duly authorized representative entitled to audit or inspect such records, fails or refuses to allow an audit or inspection of records as provided in this section, shall have his stamping permit suspended until such time as the audit or inspect is allowed. The Board may impose a penalty of \$1,000 for each day that the person fails or refuses to allow an audit or inspection of the records. The penalty shall be assessed and collected by the Board as other taxes are collected.

§ 4.1-612. 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 all times 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.

§ 4.1-613. 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 all times 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 4.1-614 shall be grounds for revocation of the license.

§ 4.1-614. 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 applies for and is granted a license as a distributor and files returns and maintains records as required of licensed distributors under this chapter and Board regulations

§ 18.2-246.6. Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Consumer" means an individual who is not ~~permitted~~ licensed as a wholesaler pursuant to § 58.1-1011 4.1-604 or who is not a ~~retailer~~ licensed as a retail dealer pursuant to § 4.1-605.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ 58.1-1000. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a retail dealer; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official

675 duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to
676 § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading
677 or other documentation indicating the true name and address of the consignor or seller and the consignee
678 or purchaser of the brands and the quantities being transported. Any person convicted of (a) a violation
679 of § 58.1-1017 or 58.1-1017.1; (b) *any offense involving the forgery of any documents, forms, invoices,*
680 *or receipts related to the purchase or sale of cigarettes or the purchase or sale of tobacco products as*
681 *defined in § 58.1-1021.01; (c) any offense involving evasion or failure to pay a cigarette or tobacco*
682 *product excise tax; or (d) any similar violation of an ordinance of any county, city, or town in the*
683 *Commonwealth or the laws of any other state or of the United States* is ineligible to be an authorized
684 holder.

685 "Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing
686 25 cigarettes.

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

699 "Exclusive distributor" means any individual, corporation, limited liability company, or limited
700 liability partnership with its principal place of business in the Commonwealth that has the sole and
701 exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes
702 manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

703 "Manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200.

704 "Pack" means a package containing either 20 or 25 cigarettes.

705 "Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who
706 (i) sells or offers for sale any cigarettes ~~and who~~, (ii) is properly registered as a retail trade with the
707 Commonwealth in accordance with the Virginia Department of Taxation Business Registration
708 Application (Form R-1), and (iii) *is duly licensed by the Alcoholic Beverage Control Board pursuant to*
709 *§ 4.1-605.*

710 "Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to retail dealers or
711 other wholesale dealers for resale.

712 "Stamping agent" shall have the same meaning as provided in § 3.2-4204. For the purposes of
713 provisions relating to "roll-your-own" tobacco, "stamping agent" shall include "distributor" as that term
714 is defined in § 58.1-1021.01.

715 "Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid
716 and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to
717 provide for the use of any type of stamp which will effectuate the purposes of this chapter including but
718 not limited to decalcomania and metering devices.

719 "Storage" means any keeping or retention in the Commonwealth of cigarettes for any purpose except
720 sale in the regular course of business or subsequent use solely outside the Commonwealth.

721 "Tax-paid cigarettes" means cigarettes that (i) bear valid Virginia stamps to evidence payment of
722 excise taxes or (ii) were purchased outside of the Commonwealth and either (a) bear a valid tax stamp
723 for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state,
724 proper evidence can be provided to establish that applicable excise taxes have been paid.

725 "Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or
726 by any transaction where possession is given, except that it shall not include the sale of cigarettes in the
727 regular course of business.

728 "Wholesale dealer" includes persons who are properly registered as tobacco product merchant
729 wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business
730 Registration Application (Form R-1) and *duly licensed by the Alcoholic Beverage Control Board*
731 *pursuant to § 4.1-604* who (i) sell cigarettes at wholesale only to retail dealers for the purpose of resale
732 only or (ii) sell at wholesale to institutional, commercial, or industrial users. "Wholesale dealer" also
733 includes chain store distribution centers or houses which distribute cigarettes to their stores for sale at
734 retail.

735 **§ 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties.**

736 A. Except as otherwise specifically provided pursuant to § 58.1-1003.2, the taxes imposed by this

chapter shall be paid by affixing stamps equaling the amount of the tax in the manner set forth. The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Every stamping agent in the Commonwealth shall affix to any unstamped cigarettes the requisite denominations and amount of stamp or stamps that represent the proper tax levied by this chapter prior to shipping to other wholesale dealers or retail outlets.

B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. All stamping agents shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes for a period of five years, and such records shall be subject to examination by the Department upon request.

C. Every stamping agent shall be required to file a report between the first and twentieth of each month, covering all revenue stamps the stamping agent affixed to cigarettes during the preceding month. The report shall (i) list all brands of cigarettes to which the Virginia revenue stamp was affixed and the quantity, measured in packs, of all such brands to which the Virginia revenue stamp was affixed; (ii) list the name and address of both the manufacturer of the cigarettes and the entity from which the cigarettes were obtained; and (iii) include the required documentation for and detail the amount and source of any bad debt deductions being taken pursuant to § 58.1-1003.1. The Department may allow such reports to be filed electronically.

D. 1. For the purpose of compensating stamping agents for accounting for the tax imposed under this article on roll-your-own tobacco, such stamping agents shall be allowed when filing a monthly return and paying the tax to deduct 2 percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents 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.

E. Any stamping agent who fails or refuses to comply with any of the above provisions ~~shall have such agent's permit to affix revenue stamps revoked by the Commissioner. Additionally, a stamping agent may be subject to a civil penalty of \$500 for each day after the due date that an agent fails or refuses to file a report required under subsection C. The penalty shall be assessed and collected by the Department as other taxes are collected.~~

§ 58.1-1006. Forms and kinds of containers, methods of breaking packages, and methods of affixing stamps; penalty for interfering with enforcement of article.

The Department shall provide by rules and regulations forms and kinds of containers, the methods of breaking packages and methods of affixing stamps that shall be employed by persons subject to the cigarette tax, thereby making possible the enforcement of payment of the cigarette tax by inspection. Any person subject to this tax engaging in or permitting such practices as are prohibited by rules and regulations of the Department or any person who upon demand of the Department or any of its officers or agents refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter, shall be guilty of a Class 2 misdemeanor. Further, a stamping agent shall ~~have such agent's stamping permit suspended and~~ be subject to a penalty of \$1,000 for each day the stamping agent engages in or permits practices that are prohibited by rules and regulations of the Department or refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter. Such penalty shall be assessed and collected by the Department as other taxes are collected.

§ 58.1-1008. Monthly reports of stamping agents; penalty.

In addition to the reporting requirements imposed by § 58.1-1003, every stamping agent qualifying as such with the Department shall be required to file a report between the first and twentieth of each month, covering the purchase or receipt by them of all cigarettes during the preceding month. The report shall give in detail the different kinds and quantities of cigarettes so purchased or received by them during the preceding month. The report shall also list all orders for cigarettes purchased through such wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the person ordering such cigarettes through such stamping agent. The Department may allow such reports to be filed electronically. If, upon examination of invoices of any stamping agent, such agent is unable to furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003. The Department may impose a penalty of

798 \$250, to be assessed and collected by the Department as other taxes are collected, on any stamping
799 agent for each failure or refusal to file the report, or portion thereof, required by this section or by
800 § 3.2-4209 in the manner and time allowed. ~~The Department may revoke a stamping permit for up to~~
801 ~~one year if the stamping agent fails to file more than one of the required reports in a timely manner in~~
802 ~~any calendar year. After such time, the stamping agent must reapply to the Department for a stamping~~
803 ~~permit.~~ The Department may also impose a penalty, to be assessed and collected by the Department as
804 other taxes are collected, of \$250 per pack of cigarettes on any person found to be selling cigarettes in
805 Virginia after his stamping permit has been revoked. Each pack of cigarettes sold shall be considered a
806 separate offense. Where willful intent exists, as defined in § 58.1-1013, the penalty shall be \$2,500 per
807 pack.

808 **§ 58.1-1009. Preparation, design, and sale of stamps; unlawful sale or purchase of stamps a**
809 **felony; penalty.**

810 A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for
811 denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind
812 of stamps to be used and may allow for electronic purchase and payment when selling such stamps.
813 Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in
814 any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

815 Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold
816 and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6
817 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such
818 stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes,
819 or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of
820 the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty
821 of a Class 6 felony. When stamping agents have ~~qualified as such with the Department, as provided in~~
822 ~~§ 58.1-1011, been duly licensed by the Alcoholic Beverage Control Board pursuant to § 4.1-604 and~~
823 purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the
824 Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two
825 percent of the total charged to the stamping agent by the Department for the purchase of the revenue
826 stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all
827 discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into
828 consideration in preparing the official estimate of the total revenues to be collected during the fiscal year
829 by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for
830 programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by
831 the general fund.

832 All stamps prescribed by the Department shall be designed and furnished in such a fashion as to
833 permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular
834 package of cigarettes, by means of a serial number or other mark on the stamp. The Department shall
835 maintain for not less than three years information identifying which wholesale dealer or retail dealer
836 affixed the revenue stamp to each package of cigarettes.

837 B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a
838 ~~current permit issued pursuant to § 58.1-1011~~ license by the Alcoholic Beverage Control Board pursuant
839 to § 4.1-604 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such
840 wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent
841 payment of the tax only if the conditions of this subsection are satisfied.

842 In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this
843 chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in
844 Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or
845 savings institution, the form and substance, and payable to the Commonwealth in a face amount
846 determined by the Tax Commissioner to be satisfactory to cover possible losses resulting from the
847 failure to remit taxes due but not exceeding two times the anticipated average monthly amount in
848 purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The
849 letter of credit shall be from a bank incorporated or authorized to conduct banking business under the
850 laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws
851 of the United States, or a federally insured savings institution located in the Commonwealth. Such bond
852 or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter
853 relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without
854 concurrent payment of the tax) for which such tax, net of any applicable discount described in
855 subsection A, shall be paid within the 30 days immediately following the date that the related revenue
856 stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so
857 written that, on timely payment of the premium thereon, it shall continue in force from year to year
858 unless sooner terminated.

859 2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and

all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date upon which such surety shall have lodged with the Commissioner written request to be released and discharged. But such request shall not operate to relieve, release or discharge such surety from any liability already accrued or which shall accrue before the expiration of such 60-day period. The Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such bond. Unless such dealer on or before the expiration of such 60 days' notice files with the Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department.

3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause, shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file the bond or letter of credit described in this subsection.

C. ~~In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates any provision of this section.~~

§ 58.1-1010. Sale of unstamped cigarettes by wholesale dealers; penalty.

A. A wholesale dealer who is duly ~~qualified~~ *licensed* as a ~~wholesale dealer stamping agent under § 58.1-1011 licensed by the Alcoholic Beverage Control Board pursuant to § 4.1-604~~ may sell cigarettes without the Virginia revenue stamps affixed thereto, provided such cigarettes are sold and shipped or delivered in interstate commerce to a person outside this Commonwealth. Such wholesale dealer shall have on file a record of such sale, the original purchase order, a copy of the invoice therefor, and a receipt from a common carrier, contract carrier, or post office showing shipment for delivery in such other state, or, if delivered by such wholesale dealer to the purchaser at a point outside of this Commonwealth, a receipt showing such delivery in addition to the record, original purchase order and copy of the invoice relating to such sale.

B. Such duly ~~qualified~~ *licensed* wholesale dealer may sell cigarettes without the Virginia revenue stamps affixed thereto, provided:

1. Such cigarettes are sold to a person who is engaged in business as a dealer in cigarettes in another state;

2. Such cigarettes are purchased exclusively for resale in the other state; and

3. Such cigarettes are at the time of sale properly stamped by the Virginia wholesale dealer with revenue stamps authorized and issued by the other state for use upon such cigarettes. A wholesale dealer shall have on file a record of each such sale, the original purchase order, a copy of the invoice therefor, a receipt from the purchaser showing that such purchase was made exclusively for resale in the other state, and a record showing the purchase and use of such revenue stamps of the other state, and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so set aside for sale outside of the Commonwealth. If upon examination of invoices of any wholesale dealer, such dealer is unable to furnish evidence to the Department of sufficient stamp purchases from such other state to cover unstamped cigarettes set aside for sale in such other state, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto in violation of § 58.1-1003.

C. Cigarettes may be sold by duly ~~qualified~~ *licensed* wholesale dealers, without revenue stamps affixed thereto, when sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Canteen Service of the U.S. Department of Veterans Affairs for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the U.S. Department of Veterans Affairs, provided the books and records, including original purchase orders and copies of invoices showing such sales, are kept on file and shall set forth in his or its monthly report to the Department the quantity of cigarettes, measured in packs, so sold.

D. Cigarettes may be sold by duly ~~qualified~~ *licensed* wholesale dealers, without revenue stamps affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in this Commonwealth and points outside of this Commonwealth for resale to or for use or consumption upon such ship or in foreign commerce.

E. The Department is authorized to adopt rules and regulations with respect to the enforcement of the

921 provisions of this section to prevent any evasion of the tax herein imposed.

922 A failure to comply with any provision of this section with respect to any sale of unstamped
923 cigarettes shall subject the wholesale dealer to the payment of the tax thereon imposed by this chapter.
924 The Department may impose a penalty, to be assessed and collected by the Department as other taxes
925 are collected, of up to \$500 per pack of cigarettes on any stamping agent it finds not in compliance with
926 any provision of this section with respect to the sale of unstamped cigarettes. ~~The Department may also~~
927 ~~suspend the stamping permit of such stamping agent until the tax and penalties have been paid to the~~
928 ~~Department.~~ Any person who violates any of the provisions of this section shall be guilty of a Class 2
929 misdemeanor.

930 **§ 58.1-1012. Duties of wholesale dealer, manufacturer and exclusive distributor on shipping,**
931 **delivering or sending out cigarettes.**

932 A. Every wholesale dealer in the Commonwealth shall, before shipping, delivering or sending out
933 any cigarettes to any dealer in the Commonwealth or for sale in the Commonwealth, cause the same to
934 have the requisite denominations and amount of stamps to represent the tax affixed as stated herein, and
935 every other wholesale dealer shall at the time of shipping or delivering any cigarettes make a true
936 duplicate invoice of the same, showing the date, amount and value of each class of articles shipped or
937 delivered, and retain a duplicate thereof. Wholesale dealers in the Commonwealth who ship, deliver, or
938 send any cigarettes to the United States government for sale or distribution to any military, naval or
939 marine reservation owned by the United States government within the Commonwealth shall be required
940 to carry out the provisions set out in this chapter for such sales or deliveries.

941 B. Any manufacturer or exclusive distributor shall not be required to affix Virginia revenue stamps
942 as required by subsection A, if such manufacturer or exclusive distributor is shipping, sending, selling,
943 or delivering the cigarettes to a wholesale dealer in the Commonwealth who is a duly ~~qualified~~
944 ~~wholesale dealer stamping agent in accordance with § 58.1-1011 licensed by the Alcoholic Beverage~~
945 ~~Control Board pursuant to § 4.1-604~~ or to a law-enforcement agency for use in the performance of its
946 duties. The manufacturer or exclusive distributor who qualifies under this section and ships, sends, sells,
947 or delivers cigarettes to a wholesale dealer shall keep on file a record of each such shipment, sale, or
948 delivery and shall maintain such record for a period of three years.

949 **§ 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article.**

950 Any person who has been issued a permit to affix revenue stamps by the Department *duly licensed*
951 *by the Alcoholic Beverage Control Board pursuant to § 4.1-605* and fails to properly affix the required
952 stamps to any cigarettes pursuant to the provisions of this chapter shall be required to pay as part of the
953 tax imposed hereunder, a civil penalty, to be assessed and collected by the Department as other taxes are
954 collected, of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month
955 period; (ii) \$5.00 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month
956 period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal
957 entity within a 36-month period. Where willful intent exists to defraud the Commonwealth of the tax
958 levied under this chapter, such person shall be required to pay a civil penalty of \$25 per pack, up to
959 \$250,000. It shall be prima facie evidence of intent to defraud when the number of such unstamped
960 cigarettes exceeds either 30 packs or five percent of the cigarettes in the place of business of such
961 person, whichever is greater. Notwithstanding the immediately preceding threshold limits, if the number
962 of unstamped packs exceeds 500 packs, it shall be prima facie evidence of intent to defraud.

963 Any cigarettes in the place of business of any person required by the provisions of this chapter to
964 stamp the same shall be prima facie evidence that they are intended for sale.

965 No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty
966 under § 58.1-1017 has been paid for such unstamped cigarettes.

967 **§ 58.1-1015. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; seizure and**
968 **forfeiture; penalties.**

969 A. Whoever removes or otherwise prepares any Virginia revenue stamp with intent to use, or cause
970 the same to be used, after it has already been used, or buys, sells, offers for sale, or gives away any
971 such washed or removed or restored stamps to any person for using or who used the same, or has in his
972 possession any washed or restored or removed or altered stamp that has been removed from the article
973 to which it has been previously affixed, or whoever for the purpose of indicating the payment of any tax
974 hereunder reuses any stamp which has heretofore been used for the purpose of paying any tax provided
975 in this article, or whoever manufactures, buys, sells, offers for sale, or has in his possession any
976 reproduction or counterfeit of the Virginia revenue stamps provided for in this article, or whoever sells
977 any Virginia revenue stamps not affixed to taxable cigarettes shall be subject to the penalty provided for
978 in this section.

979 B. It shall be unlawful to sell or possess cigarettes that are affixed with a reproduction or counterfeit
980 of Virginia revenue stamps. Such cigarettes and stamps shall be subject to seizure, forfeiture and
981 destruction by the Department or any law-enforcement officer of the Commonwealth. All fixtures,
982 equipment, materials and personal property used in substantial connection with the sale or possession of

cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps 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.

C. Any person who knowingly violates subsection A with a total quantity of less than 40 revenue stamps shall be punished by a civil penalty of no more than \$1,000. Any person who knowingly violates subsection B shall, for a second or subsequent offense involving a total quantity of less than 40 revenue stamps, be punished by a civil penalty of no more than \$5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

D. Any person who knowingly violates subsection B with a total quantity of 40 or more revenue stamps shall be punished by a civil penalty of no more than \$2,000. Any person who knowingly violates subsection B shall, for a second or subsequent offense involving a total quantity of 40 or more revenue stamps, be punished by a civil penalty of no more than \$50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

The Attorney General is authorized to enforce the provisions of this section.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.

A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives, or possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In addition, such person shall be required to pay a civil penalty of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month period; (ii) \$5 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal entity 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 chapter, such person shall be required to pay a civil penalty of \$25 per pack, up to \$250,000.

B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess less than 500 packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess 500 or more packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony. Any person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 5 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection.

D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as provided in ~~§ 58.1-1014~~, duly licensed by the Alcoholic Beverage Control Board pursuant to § 4.1-604 or (ii) is not a retail dealer who has lawfully purchased cigarettes from such permit holder has in his possession within the Commonwealth more than 30 packages of unstamped cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon. No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under § 58.1-1013 has been paid for such unstamped cigarettes.

§ 58.1-1017.1. Possession with intent to distribute tax-paid, contraband cigarettes; penalties.

Any person who possesses, with intent to distribute, more than 5,000 (25 cartons) but fewer than ~~100,000 (500 cartons)~~ 40,000 (200 cartons) tax-paid cigarettes is guilty of a Class 1 misdemeanor for a first offense and is guilty of a Class 6 felony for any second or subsequent offense. Any person who possesses, with intent to distribute, ~~100,000 (500 cartons)~~ 40,000 (200 cartons) or more tax-paid cigarettes is guilty of a Class 6 felony for a first offense and is guilty of a Class 5 felony for a second or subsequent offense. Additionally, any person who violates the provisions of this section shall be assessed a civil penalty of (i) \$2.50 per pack, but no less than \$5,000, for a first offense; (ii) \$5 per pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (iii) \$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the ~~Department~~ Alcoholic Beverage Control Board as other taxes are collected. Any civil penalties collected by the Alcoholic Beverage Control Board shall be deposited in accordance with § 4.1-116.

The provisions of this section shall not apply to an authorized holder.

§ 58.1-1017.3. Fraudulent purchase of cigarettes; penalties.

Any person who purchases 5,000 (25 cartons) cigarettes or fewer using (i) a forged business license, (ii) a business license obtained under false pretenses, (iii) a forged or invalid Virginia sales and use tax exemption certificate, or (iv) a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. Any person who purchases more than 5,000 (25 cartons) cigarettes using (a) a forged business license, (b) a business license obtained under false pretenses, (c) a forged or invalid Virginia sales and use tax exemption certificate, or (d) a Virginia sales and use tax exemption certificate obtained under false pretenses, is guilty of a Class 6 felony for a first offense and a Class 5 felony for a second or subsequent offense. Additionally, any person who violates the provisions of this section shall be assessed a civil penalty of (1) \$2.50 per pack, but no less than \$5,000, for a first offense; (2) \$5 per pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (3) \$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the Alcoholic Beverage Control Board as other taxes are collected. Any civil penalties collected by the Alcoholic Beverage Control Board shall be deposited in accordance with § 4.1-116.

The provisions of this section shall not preclude prosecution under any other statute.

§ 58.1-1021.01. Definitions.

As used in this article, unless the context clearly shows otherwise, the term or phrase:

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

"Licensed distributor" means any distributor duly licensed to distribute tobacco products in the Commonwealth by the Alcoholic Beverage Control Board pursuant to § 4.1-604.

"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 products and sells tobacco products to a distributor.

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

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

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

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers and is duly licensed by the Alcoholic Beverage Control Board pursuant to § 4.1-605.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall also include loose leaf tobacco.

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

A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth pursuant to ~~this article Chapter 6 (§ 4.1-600 et seq.) of Title 4.1~~ to import, transport, or possess, for resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate that tobacco 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 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 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 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 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 product, up to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco product, up to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco 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 product, up to \$250,000.

§ 58.1-1035. Revocation or suspension of license by Alcoholic Beverage Control Board; civil penalties; sharing of information.

A. The Department may revoke or suspend the permit of any wholesale dealer, as defined in § 58.1-1000, for a violation of this chapter or any ~~rule~~ *regulation* adopted by the Department as ~~provided in § 58.1-1011~~ *Alcoholic Beverage Control Board in accordance with § 4.1-607.*

B. In addition, the Department may impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000 upon finding a violation of this chapter and may assess the tax due and any interest on the product acquired, possessed, sold, or offered for sale in violation of this chapter.

C. For the purpose of enforcing this chapter, the Department may request or share information with any federal, state or local agency, including any agency of another state or local agency thereof.

2. That the provisions of this act concerning the (i) licensure by the Alcoholic Beverage Control Board of distributors of tobacco products and (ii) attendant provisions relating to the regulation of distributors of tobacco products by the Alcoholic Beverage Control Board shall become effective on July 1, 2016.

3. That the Virginia State Crime Commission shall continue to study the issues relating to transferring the licensure of distributors of tobacco products, as those terms are defined in this act, from the Virginia Department of Taxation to the Alcoholic Beverage Control Board in accordance with this act to ensure that such transfer is accomplished in an efficient manner with minimum disruption of the regulated community.

4. That §§ 4.1-103.01, 58.1-1007, 58.1-1011, 58.1-1021.04:1, 58.1-1021.04:2, and 58.1-1021.04:4 of the Code of Virginia are repealed.

5. That any rules or guidelines established by the Tax Commissioner in accordance with Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia that are in effect as of July 1, 2015, and that pertain to the subject of this act shall remain in full force and effect until altered, amended, or rescinded by the Alcoholic Beverage Control Board.

6. That any licenses issued by the Department of Taxation in accordance with Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia before July 1, 2015, shall remain in full force and effect until the expiration of such license, at which time any renewal of such license shall be made in accordance with this act.

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

8. The Alcoholic Beverage Control Board and the Department of Taxation shall conduct a review of the taxes imposed under Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia in order to determine what additional administrative responsibilities may be transferred and to jointly prepare any legislation necessary to provide for such transfer prior to the beginning of the 2016 Regular Session of the General Assembly.

9. That the provisions of this act may result in a net increase in periods of imprisonment or

1167 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
1168 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
1169 2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing
1170 Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated
1171 amount of the necessary appropriation cannot be determined for periods of commitment to the
1172 custody of the Department of Juvenile Justice.