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SENATE BILL NO. 1230

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 5, 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 4.1-612, 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 4.1-612, 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 *before January 1, 2016*, 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 *and on or after January 1, 2016, is 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

122 upon such licensed premises;

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

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

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

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

129 o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly
130 allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use
131 marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled
132 paraphernalia as those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-247
133 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii)
134 laundered money in violation of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in
135 violation of Articles 1 and 1.1 of Chapter 7 (~~§ 18.2-247 et seq.~~) of Title 18.2 or the Drug Control Act
136 (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the
137 operation of the licensed business which facilitates the commission of any of the offenses set forth
138 herein; or

139 p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises
140 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any
141 portion of public property immediately adjacent to the licensed premises from becoming a place where
142 patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et
143 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
144 (§ 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
145 (§ 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
146 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
147 Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to
148 reasonably be deemed a continuing threat to the public safety.

149 2. The place occupied by the licensee:

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

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

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

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

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

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

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

171 7. Any other cause authorized by ~~this title~~ Chapters 1 (§ 4.1-100 et seq.), 2 (§ 4.1-200 et seq.), 3
172 (§ 4.1-300 et seq.), 4 (§ 4.1-400 et seq.), or 5 (§ 4.1-500 et seq.).

173 CHAPTER 6.
174 TOBACCO SALES.

175 § 4.1-600. Definitions.

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

177 "Cigarette" means any product that contains nicotine, is intended to be burned or heated under
178 ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in
179 any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which,
180 because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely
181 to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any
182 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*

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

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

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

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

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

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

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

268 **§ 4.1-602. Tobacco product licenses.**

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

270 *1. Tobacco products distributor's license; and*

271 *2. Tobacco products retail dealer's license.*

272 **§ 4.1-603. To whom privileges conferred by licenses extend; separate license for each place of**
 273 **business.**

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

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

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

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

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

296 *F. The Board may grant licenses for one year or for multiple years, not to exceed three years, based*
 297 *on the fees set forth in § 4.1-610. Qualification for a multiyear license shall be determined on the basis*
 298 *of criteria established by the Board. Fees for multiyear licenses shall not be refundable except as*
 299 *provided in § 4.1-610.*

300 *G. The Board may permit a licensee who fails to pay:*

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

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

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

310 **§ 4.1-604. Distributor's license required; records to be kept; inspections; penalty.**

311 A. Beginning July 1, 2015, no person shall engage in the business of selling or dealing in tobacco
312 products as a distributor in the Commonwealth without first having obtained a license from the Board
313 for each location or place of business. Each application for a distributor's license shall be accompanied
314 by an application fee in accordance with § 4.1-610. Every application for such license shall be made on
315 a form prescribed by the Board and the following information shall be provided on the application:

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

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

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

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

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

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

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

368 D. The Board shall compile and maintain a current list of licensed distributors. Such list shall be
 369 shared with the Department of Taxation, the Office of the Attorney General, local tax authorities, and
 370 local, state, and federal law enforcement agencies.

371 E. 1. Each distributor shall keep in each licensed place of business complete and accurate records
 372 for that place of business, including itemized invoices of (i) tobacco products held, purchased,
 373 manufactured, brought in or caused to be brought in from outside the Commonwealth, or shipped or
 374 transported to retail dealers in the Commonwealth; (ii) all sales of tobacco products made; (iii) all
 375 tobacco products transferred to other retail outlets owned or controlled by that licensed distributor; and
 376 (iv) any records required by the Board.

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

381 2. At all times duly authorized agents or employees of the Board may enter any place of business of
 382 a distributor and inspect the premises, the records required to be kept under this chapter, and the
 383 tobacco products contained therein, to determine whether all the provisions of this chapter are being
 384 complied with fully. Refusal to permit such inspection by a special agent or employee of the Board shall
 385 be grounds for revocation of the license.

386 3. Each person who sells tobacco products to persons licensed under this chapter to sell tobacco
 387 products at retail shall render with each sale itemized invoices showing the seller's name and address,
 388 the purchaser's name and address, the date of sale, and all prices. Such person shall preserve legible
 389 copies of all such invoices for three years after the date of sale.

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

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

395 **§ 4.1-605. Retail dealer's license required; records to be kept; inspections; penalty.**

396 A. Beginning July 1, 2017, no person shall engage in the business of selling tobacco products in the
 397 Commonwealth without first having obtained a license from the Board for each location or place of
 398 business. Each application for a retail dealer's license shall be accompanied by an application fee in
 399 accordance with subsection B. Every application for such license shall be made on a form prescribed by
 400 the Board and the following information shall be provided on the application:

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

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

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

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

408 B. Once a license is granted pursuant to this section, such person shall be entitled to act as a retail
 409 dealer and, unless such person maintains a registered agent pursuant to Chapter 9 (§ 13.1-601 et seq.),
 410 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
 411 (§ 50-73.1 et seq.) or 2.2 (§ 50-73.79 et seq.) of Title 50, shall be deemed to have appointed the Clerk
 412 of the State Corporation Commission as the person's agent for the purpose of service of process relating
 413 to any matter or issue involving the person and arising under the provisions of this chapter.

414 Prior to granting a retail dealer's license, the Board shall conduct a background investigation, to
 415 include a Virginia criminal history records search of the applicant, or the responsible principals,
 416 managers, and other persons as designated by the applicant that are engaged in handling tobacco
 417 products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the
 418 Board deems a national criminal records search necessary, on applicants for licensure as tobacco
 419 products retail dealers. However, the Board may waive the requirement for a criminal history records
 420 search and completed personal data form for officers, directors, nonmanaging members, or limited
 421 partners of any applicant corporation, limited liability company, or limited partnership, where the
 422 applicant holds a valid license under Chapter 2 (§ 4.1-200 et seq.). The Board may refuse to grant a
 423 retail dealer's license or may suspend, revoke, or refuse to renew a retail dealer's license granted to any
 424 person, partnership, corporation, limited liability company, or business trust if it determines that the
 425 principals, managers, and other persons engaged in handling tobacco products at the licensable location
 426 of the applicant (i) have been found guilty of any fraud or misrepresentation in any connection; (ii)
 427 have been convicted of robbery, extortion, burglary, perjury, bribery, treason, or racketeering; (iii) have
 428 been convicted of a felony; or (iv) are ineligible to be an authorized holder as defined in § 58.1-1000.

429 Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly
430 and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a
431 retail dealer's license to the Board is guilty of a Class 1 misdemeanor. The Board may establish an
432 application fee not to exceed \$65 for a retail dealer's license; however, if the applicant possesses a
433 license granted under Chapter 2 (§ 4.1-200 et seq.) at the time of application for a retail dealer's
434 license, the Board may establish an application fee not to exceed \$45. Such fees shall be retained by the
435 Board to be applied to the administrative and other costs of processing retail dealer's license
436 applications, conducting background investigations, and granting retail dealer's licenses.

437 C. Upon receipt of an application in proper form, payment of the required license fee plus the actual
438 cost charged to the Department of State Police by the Federal Bureau of Investigation or the Central
439 Criminal Records Exchange for processing any fingerprints through the Federal Bureau of Investigation
440 or the Central Criminal Records Exchange for each criminal history records search required by the
441 Board, and after receipt of the results of the background investigation, the Board shall, unless otherwise
442 provided by this chapter, grant to the applicant a license, which shall permit the licensee to engage in
443 business as a retail dealer at the place of business shown on the license. Each license, or a copy
444 thereof, shall be prominently displayed on the premises covered by the license. No license shall be
445 transferable to any other person. Retail dealers' licenses granted pursuant to this section shall be valid
446 for a period of one year from the date of issue unless revoked by the Board in the manner provided
447 herein. The Board may at any time revoke the license granted to any retail dealer who is found guilty of
448 violating or noncompliance with any of the provisions of this chapter, any of the Board regulations
449 adopted and promulgated under authority of this chapter, or the provisions of Chapter 10 (§ 58.1-1000
450 et seq.) of Title 58.1.

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

453 E. 1. Each retail dealer shall keep in each licensed place of business complete and accurate records
454 for that place of business, including itemized invoices of (i) tobacco products held, purchased, or
455 brought in or caused to be brought in from outside the Commonwealth; (ii) all sales of tobacco
456 products made; (iii) all tobacco products transferred to other retail outlets owned or controlled by the
457 retail dealer; and (iv) any records required by the Board.

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

462 2. At all times duly authorized agents or employees of the Board may enter any place of business of
463 a retail dealer and inspect the premises, the records required to be kept under this chapter, and the
464 tobacco products contained therein, to determine whether all the provisions of this chapter are being
465 complied with fully. Refusal to permit such inspection by a special agent or employee of the Board shall
466 be grounds for revocation of the license.

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

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

472 **§ 4.1-606. Qualification for permit to affix Virginia revenue stamps; penalty.**

473 A. Only manufacturers, distributors, and retail dealers may qualify as stamping agents. Beginning
474 January 1, 2016, and except as provided in this section, it shall be unlawful for any manufacturer,
475 distributor, or retail dealer to purchase, possess, or affix Virginia revenue stamps without first obtaining
476 a permit to do so from the Board. Any person licensed by the Board, in accordance with this chapter as
477 a distributor or retailer shall be entitled to receive, upon request, a permit as a stamping agent, with no
478 additional application or fee required. Every manufacturer who desires to qualify as a stamping agent
479 with the Board shall make application to the Board on forms prescribed for this purpose, which shall be
480 supplied upon request. The application forms shall (i) require such information relative to the nature of
481 business engaged in by the applicant as the Board deems necessary to the qualifying of the applicant as
482 a stamping agent and (ii) be accompanied by an application fee of \$750.

483 B. The Board shall conduct a background investigation, to include a Virginia criminal history
484 records search of the applicant, or its responsible principals, managers, and other persons engaged in
485 handling and stamping cigarettes at the locations to be covered by the permit, that shall be submitted to
486 the Federal Bureau of Investigation if the Board determines a national criminal records search is
487 necessary, on applicants for a permit as cigarette tax stamping agents. The Board may refuse to issue a
488 stamping permit or may suspend, revoke, or refuse to renew a stamping permit issued to any
489 manufacturer, if it determines that the manufacturer's principals, managers, and other persons engaged
490 in handling and stamping cigarettes at the locations covered by the permit have been (i) found guilty of

491 any fraud or misrepresentation in any connection, (ii) convicted of robbery, extortion, burglary, larceny,
 492 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering, (iii) convicted
 493 of a felony, or (iv) are ineligible to be an authorized holder as defined in § 58.1-1000. Anyone who
 494 knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully
 495 makes a false, fictitious, or fraudulent statement or representation in any application for a stamping
 496 permit to the Board is guilty of a Class 1 misdemeanor. The fee for the renewal of a permit shall be
 497 \$750. The application and renewal fee shall be retained by the Board and applied to the administrative
 498 and other costs of processing stamping agent applications, conducting background investigations, and
 499 issuing stamping permits. If the Board, after review of his application and receipt of the results of a
 500 background investigation, believes the manufacturer to be qualified, the Board shall issue to a permit
 501 qualifying such manufacturer as a stamping agent and he shall be allowed the discount on purchases of
 502 Virginia revenue stamps as set out in Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 for stamping agents
 503 purchasing stamps for their individual use. Such stamping agent shall be authorized to affix Virginia
 504 revenue stamps, and if the applicant qualifies as a distributor, that shall be so noted on the permit
 505 issued by the Board. Permits issued pursuant to this section shall be valid for a period of three years
 506 from the date of issue unless revoked by the Board in the manner provided in this chapter. The
 507 Department of Taxation shall not sell Virginia revenue stamps to any person or entity unless and until
 508 the Board has issued that person or entity a permit to affix Virginia revenue stamps.

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

513 **§ 4.1-607. Notice and hearings for refusal to grant licenses; Administrative Process Act;**
 514 **exceptions.**

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

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

522 1. License for the applicant has been refused or revoked within a period of 12 months;

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

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

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

533 **§ 4.1-608. Suspension or revocation of licenses; notice and hearings; imposition of penalties.**

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

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

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

551 The action of the Board in suspending or revoking any license shall be subject to judicial review in

552 accordance with the Administrative Process Act. Such review shall extend to the entire evidential record
553 of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal
554 shall lie to the Court of Appeals from any order of the court. Notwithstanding § 8.01-676.1, the final
555 judgment or order of the circuit court shall not be suspended, stayed, or modified by such circuit court
556 pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

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

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

565 D. The Board shall, by regulation:

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

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

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

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

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

582 **§ 4.1-609. Suspension or revocation; disposition of tobacco products on hand; termination.**

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

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

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

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

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

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

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

601 **§ 4.1-610. Taxes on licenses; refunds.**

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

603 1. Tobacco products distributor's license, \$750; and

604 2. Tobacco products retail dealer's license, \$150.

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

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

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

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

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

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

623 § 4.1-611. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject
624 to inspection; penalty.

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

638 § 4.1-612. Purchase of tobacco products for resale; evidence of valid license.

639 A. No retail dealer shall purchase tobacco products for resale to consumers from any person within
640 or outside the Commonwealth unless:

641 1. The retail dealer purchases from a distributor licensed by the Board.

642 2. The retail dealer applies for and is granted a license as a distributor and files returns and
643 maintains records as required of licensed distributors under this chapter and Board regulations.

644 B. Beginning July 1, 2017, any distributor or retail dealer that purchases tobacco products for resale
645 to consumers within the Commonwealth shall provide to the seller (i) its certificate of tax exemption
646 from sales and use tax issued by the Department of Taxation and (ii) evidence of its licensure in
647 accordance with this chapter.

648 § 18.2-246.6. Definitions.

649 For purposes of this article:

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

651 "Board" means the Virginia Alcoholic Beverage Control Board.

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

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

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

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

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

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

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

672 § 58.1-1000. Definitions.

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

674 "Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a

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

688 "Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing
689 25 cigarettes.

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

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

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

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

708 "Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who
709 (i) sells or offers for sale any cigarettes ~~and who~~, (ii) is properly registered as a retail trade with the
710 Commonwealth in accordance with the Virginia Department of Taxation Business Registration
711 Application (Form R-1), and (iii) beginning July 1, 2017, is duly licensed by the Alcoholic Beverage
712 Control Board pursuant to § 4.1-605.

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

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

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

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

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

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

731 "Wholesale dealer" includes persons who are properly registered as tobacco product merchant
732 wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business
733 Registration Application (Form R-1) and beginning July 1, 2015, duly licensed by the Alcoholic
734 Beverage Control Board pursuant to § 4.1-604 who (i) sell cigarettes at wholesale only to retail dealers
735 for the purpose of resale only or (ii) sell at wholesale to institutional, commercial, or industrial users.
736 "Wholesale dealer" also includes chain store distribution centers or houses which distribute cigarettes to

737 their stores for sale at retail.

738 **§ 58.1-1003. How paid; affixing of stamps; records of stamping agents; civil penalties.**

739 A. Except as otherwise specifically provided pursuant to § 58.1-1003.2, the taxes imposed by this
740 chapter shall be paid by affixing stamps equaling the amount of the tax in the manner set forth. The
741 stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal
742 will require continued application of water or steam. Every stamping agent in the Commonwealth shall
743 affix to any unstamped cigarettes the requisite denominations and amount of stamp or stamps that
744 represent the proper tax levied by this chapter prior to shipping to other wholesale dealers or retail
745 outlets.

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

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

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

763 2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all
764 discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into
765 consideration in preparing the official estimate of the total revenues to be collected during the fiscal year
766 by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for
767 programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by
768 the general fund.

769 E. Any stamping agent who fails or refuses to comply with any of the above provisions shall have
770 such agent's permit to affix revenue stamps revoked by the Commissioner. Additionally, a stamping
771 agent may be subject to a civil penalty of \$500 for each day after the due date that an agent fails or
772 refuses to file a report required under subsection C. The penalty shall be assessed and collected by the
773 Department Alcoholic Beverage Control Board as other taxes are collected. *Any civil penalties collected*
774 *by the Alcoholic Beverage Control Board shall be deposited in accordance with § 4.1-116.*

775 **§ 58.1-1006. Forms and kinds of containers, methods of breaking packages, and methods of**
776 **affixing stamps; penalty for interfering with enforcement of article.**

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

790 **§ 58.1-1008. Monthly reports of stamping agents; penalty.**

791 In addition to the reporting requirements imposed by § 58.1-1003, every stamping agent qualifying as
792 such with the Department shall be required to file a report between the first and twentieth of each
793 month, covering the purchase or receipt by them of all cigarettes during the preceding month. The report
794 shall give in detail the different kinds and quantities of cigarettes so purchased or received by them
795 during the preceding month. The report shall also list all orders for cigarettes purchased through such
796 wholesale dealer from without this Commonwealth on a drop shipment and consigned direct to the
797 person ordering such cigarettes through such stamping agent. The Department may allow such reports to

798 be filed electronically. If, upon examination of invoices of any stamping agent, such agent is unable to
799 furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes
800 purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the
801 proper stamps affixed thereto in violation of § 58.1-1003. The Department may impose a penalty of
802 \$250, to be assessed and collected by the Department as other taxes are collected, on any stamping
803 agent for each failure or refusal to file the report, or portion thereof, required by this section or by
804 § 3.2-4209 in the manner and time allowed. ~~The Department may revoke a~~ A stamping permit *may be*
805 *revoked* for up to one year if the stamping agent fails to file more than one of the required reports in a
806 timely manner in any calendar year. After such time, the stamping agent must reapply to the Department
807 for a stamping permit. The Department may also impose a penalty, to be assessed and collected by the
808 Department as other taxes are collected, of \$250 per pack of cigarettes on any person found to be
809 selling cigarettes in Virginia after his stamping permit has been revoked. Each pack of cigarettes sold
810 shall be considered a separate offense. Where willful intent exists, as defined in § 58.1-1013, the penalty
811 shall be \$2,500 per pack.

812 **§ 58.1-1009. Preparation, design, and sale of stamps; unlawful sale or purchase of stamps a**
813 **felony; penalty.**

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

819 Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold
820 and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6
821 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such
822 stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes,
823 or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of
824 the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty
825 of a Class 6 felony. When stamping agents have ~~qualified as such with the Department, as provided in~~
826 ~~§ 58.1-1011, been granted a permit by the Alcoholic Beverage Control Board pursuant to § 4.1-606~~ and
827 purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the
828 Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two
829 percent of the total charged to the stamping agent by the Department for the purchase of the revenue
830 stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all
831 discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into
832 consideration in preparing the official estimate of the total revenues to be collected during the fiscal year
833 by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for
834 programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by
835 the general fund.

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

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

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

860 stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so
861 written that, on timely payment of the premium thereon, it shall continue in force from year to year
862 unless sooner terminated.

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

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

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

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

886 **§ 58.1-1010. Sale of unstamped cigarettes by wholesale dealers; penalty.**

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

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

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

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

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

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

920 D. Cigarettes may be sold by duly qualified licensed wholesale dealers, without revenue stamps

921 affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise
 922 shipping between points in this Commonwealth and points outside of this Commonwealth for resale to
 923 or for use or consumption upon such ship or in foreign commerce.

924 E. The Department is authorized to adopt rules and regulations with respect to the enforcement of the
 925 provisions of this section to prevent any evasion of the tax herein imposed.

926 A failure to comply with any provision of this section with respect to any sale of unstamped
 927 cigarettes shall subject the wholesale dealer to the payment of the tax thereon imposed by this chapter.
 928 The Department may impose a penalty, to be assessed and collected by the Department as other taxes
 929 are collected, of up to \$500 per pack of cigarettes on any stamping agent it finds not in compliance with
 930 any provision of this section with respect to the sale of unstamped cigarettes. ~~The~~ *Prior to January 1,*
 931 *2016, the* Department may also suspend the stamping permit of such stamping agent until the tax and
 932 penalties have been paid to the Department. Any person who violates any of the provisions of this
 933 section shall be guilty of a Class 2 misdemeanor.

934 **§ 58.1-1012. Duties of wholesale dealer, manufacturer and exclusive distributor on shipping,**
 935 **delivering or sending out cigarettes.**

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

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

953 **§ 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article.**

954 Any person who has been issued a ~~permit to affix revenue stamps by the Department duly licensed~~
 955 ~~by the Alcoholic Beverage Control Board pursuant to § 4.1-605~~ and fails to properly affix the required
 956 stamps to any cigarettes pursuant to the provisions of this chapter shall be required to pay as part of the
 957 tax imposed hereunder, a civil penalty, to be assessed and collected by the Department as other taxes are
 958 collected, of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month
 959 period; (ii) \$5.00 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month
 960 period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal
 961 entity within a 36-month period. Where willful intent exists to defraud the Commonwealth of the tax
 962 levied under this chapter, such person shall be required to pay a civil penalty of \$25 per pack, up to
 963 \$250,000. It shall be prima facie evidence of intent to defraud when the number of such unstamped
 964 cigarettes exceeds either 30 packs or five percent of the cigarettes in the place of business of such
 965 person, whichever is greater. Notwithstanding the immediately preceding threshold limits, if the number
 966 of unstamped packs exceeds 500 packs, it shall be prima facie evidence of intent to defraud.

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

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

971 **§ 58.1-1015. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; seizure and**
 972 **forfeiture; penalties.**

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

983 B. It shall be unlawful to sell or possess cigarettes that are affixed with a reproduction or counterfeit
 984 of Virginia revenue stamps. Such cigarettes and stamps shall be subject to seizure, forfeiture and
 985 destruction by the Department or any law-enforcement officer of the Commonwealth. All fixtures,
 986 equipment, materials and personal property used in substantial connection with the sale or possession of
 987 cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps in a knowing
 988 and intentional violation of this article shall be subject to seizure and forfeiture according to the
 989 procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

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

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

1000 The Attorney General is authorized to enforce the provisions of this section.

1001 **§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.**

1002 A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives, or
 1003 possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In
 1004 addition, such person shall be required to pay a civil penalty of (i) \$2.50 per pack, up to \$500, for the
 1005 first violation by a legal entity within a 36-month period; (ii) \$5 per pack, up to \$1,000, for the second
 1006 violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the
 1007 third and any subsequent violation by the legal entity within a 36-month period, to be assessed and
 1008 collected by the Department as other taxes are collected. In addition, where willful intent exists to
 1009 defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a
 1010 civil penalty of \$25 per pack, up to \$250,000.

1011 B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
 1012 transport, receive or possess less than 500 packages of cigarettes unless the same have been stamped in
 1013 the manner required by law, for the purpose of evading the payment of the taxes on such products. Any
 1014 person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. Any person who is
 1015 convicted of a second or subsequent violation of this subsection is guilty of a Class 6 felony, provided
 1016 that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or
 1017 found by the jury or judge before whom the person is tried, that the accused was previously convicted
 1018 of a violation of this subsection.

1019 C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
 1020 transport, receive or possess 500 or more packages of cigarettes unless the same have been stamped in
 1021 the manner required by law, for the purpose of evading the payment of the taxes on such products. Any
 1022 person violating the provisions of this subsection shall be guilty of a Class 6 felony. Any person who is
 1023 convicted of a second or subsequent violation of this subsection is guilty of a Class 5 felony, provided
 1024 that the accused was at liberty as defined in § 53.1-151 between each conviction and it is admitted, or
 1025 found by the jury or judge before whom the person is tried, that the accused was previously convicted
 1026 of a violation of this subsection.

1027 D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as
 1028 provided in ~~§ 58.1-1011~~, *duly licensed by the Alcoholic Beverage Control Board pursuant to § 4.1-604*
 1029 or (ii) is not a retail dealer who has lawfully purchased cigarettes from such permit holder has in his
 1030 possession within the Commonwealth more than 30 packages of unstamped cigarettes, such possession
 1031 shall be presumed to be for the purpose of evading the payment of the taxes due thereon. No civil
 1032 penalty shall be imposed under this section for any unstamped cigarettes if a civil penalty under
 1033 § 58.1-1013 has been paid for such unstamped cigarettes.

1034 **§ 58.1-1017.1. Possession with intent to distribute tax-paid, contraband cigarettes; penalties.**

1035 Any person who possesses, with intent to distribute, more than 5,000 (25 cartons) but fewer than
 1036 ~~100,000 (500 cartons)~~ *40,000 (200 cartons)* tax-paid cigarettes is guilty of a Class 1 misdemeanor for a
 1037 first offense and is guilty of a Class 6 felony for any second or subsequent offense. Any person who
 1038 possesses, with intent to distribute, ~~100,000 (500 cartons)~~ *40,000 (200 cartons)* or more tax-paid
 1039 cigarettes is guilty of a Class 6 felony for a first offense and is guilty of a Class 5 felony for a second
 1040 or subsequent offense. Additionally, any person who violates the provisions of this section shall be
 1041 assessed a civil penalty of (i) \$2.50 per pack, but no less than \$5,000, for a first offense; (ii) \$5 per
 1042 pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (iii)
 1043 \$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a

1044 36-month period. The civil penalties shall be assessed and collected by the ~~Department~~ *Alcoholic*
 1045 *Beverage Control Board* as other taxes are collected. *Any civil penalties collected by the Alcoholic*
 1046 *Beverage Control Board shall be deposited in accordance with § 4.1-116.*

1047 The provisions of this section shall not apply to an authorized holder.

1048 **§ 58.1-1017.3. Fraudulent purchase of cigarettes; penalties.**

1049 *Any person who purchases 5,000 (25 cartons) cigarettes or fewer using (i) a forged business license,*
 1050 *(ii) a business license obtained under false pretenses, (iii) a forged or invalid Virginia sales and use tax*
 1051 *exemption certificate, or (iv) a Virginia sales and use tax exemption certificate obtained under false*
 1052 *pretenses is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or*
 1053 *subsequent offense. Any person who purchases more than 5,000 (25 cartons) cigarettes using (a) a*
 1054 *forged business license, (b) a business license obtained under false pretenses, (c) a forged or invalid*
 1055 *Virginia sales and use tax exemption certificate, or (d) a Virginia sales and use tax exemption certificate*
 1056 *obtained under false pretenses, is guilty of a Class 6 felony for a first offense and a Class 5 felony for a*
 1057 *second or subsequent offense. Additionally, any person who violates the provisions of this section shall*
 1058 *be assessed a civil penalty of (1) \$2.50 per pack, but no less than \$5,000, for a first offense; (2) \$5 per*
 1059 *pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (3)*
 1060 *\$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a*
 1061 *36-month period. The civil penalties shall be assessed and collected by the Alcoholic Beverage Control*
 1062 *Board as other taxes are collected. Any civil penalties collected by the Alcoholic Beverage Control*
 1063 *Board shall be deposited in accordance with § 4.1-116.*

1064 *The provisions of this section shall not preclude prosecution under any other statute.*

1065 **§ 58.1-1021.01. Definitions.**

1066 As used in this article, unless the context clearly shows otherwise, the term or phrase:

1067 "Distributor" means (i) any person engaged in the business of selling tobacco products in the
 1068 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the
 1069 Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or
 1070 stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged
 1071 in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco
 1072 products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any
 1073 retail dealer in possession of untaxed tobacco products in the Commonwealth.

1074 "Licensed distributor" means any distributor duly licensed to distribute tobacco products in the
 1075 Commonwealth by the Alcoholic Beverage Control Board pursuant to § 4.1-604 on or after July 1,
 1076 2015.

1077 "Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include
 1078 moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1079 1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing
 1080 at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the
 1081 manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately
 1082 and containing one individual package.

1083 2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more
 1084 than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to
 1085 consumers as a single unit and not produced to be divided or sold separately and containing one
 1086 individual package.

1087 3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less
 1088 than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to
 1089 consumers as a single unit and not produced to be divided or sold separately and containing one
 1090 individual package.

1091 "Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco
 1092 products to a distributor.

1093 "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the
 1094 manufacturer's tobacco products.

1095 "Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's
 1096 representative, or any other person sells tobacco products to an unaffiliated distributor.

1097 "Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is
 1098 not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is
 1099 intended to be placed in the nasal cavity.

1100 "Person" means any individual, corporation, partnership, association, company, business, trust, joint
 1101 venture, or other legal entity.

1102 "Retail dealer" means every person who sells or offers for sale any tobacco product to consumers
 1103 and, beginning July 1, 2017, is duly licensed by the Alcoholic Beverage Control Board pursuant to
 1104 § 4.1-605.

1105 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal

1106 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m)
1107 of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in
1108 § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall
1109 also include loose leaf tobacco.

1110 **§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco products; civil**
1111 **penalty.**

1112 A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth
1113 pursuant to ~~this article~~ *Chapter 6 (§ 4.1-600 et seq.) of Title 4.1* to import, transport, or possess, for
1114 resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate
1115 that tobacco products are being imported, transported, or possessed in a manner as to knowingly and
1116 intentionally evade or attempt to evade the tax imposed by this article. Such tobacco products shall be
1117 subject to seizure, forfeiture, and destruction by any law-enforcement officer of the Commonwealth. All
1118 fixtures, equipment, materials, and personal property used in substantial connection with the sale or
1119 possession of tobacco products involved in a knowing and intentional violation of this article shall be
1120 subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et
1121 seq.) of Title 19.2, applied mutatis mutandis.

1122 B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale
1123 tobacco products upon which the tax imposed by this article has not been paid shall be required to pay
1124 any tax owed pursuant to this article. In addition, if such person imports, transports, or possesses such
1125 tobacco products in such a manner as to knowingly and intentionally evade or attempt to evade the tax
1126 imposed by this article, he shall be required to pay a civil penalty of (i) \$2.50 per tobacco product, up
1127 to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco product, up
1128 to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco
1129 product, up to \$50,000, for the third or subsequent violation by the person within a 36-month period, to
1130 be assessed and collected by the Department as other taxes are collected. In addition, where willful
1131 intent exists to defraud the Commonwealth of the tax levied under this article, such person shall be
1132 required to pay a civil penalty of \$25 per tobacco product, up to \$250,000.

1133 **§ 58.1-1035. Revocation or suspension of license by Alcoholic Beverage Control Board; civil**
1134 **penalties; sharing of information.**

1135 A. The ~~Department~~ *Alcoholic Beverage Control Board* may revoke or suspend the permit of any
1136 wholesale dealer, as defined in § 58.1-1000, for a violation of this chapter or any ~~rule~~ *regulation*
1137 adopted by the ~~Department~~ as provided in ~~§ 58.1-1014~~ *Alcoholic Beverage Control Board in accordance*
1138 *with § 4.1-607.*

1139 B. In addition, the ~~Department~~ *Alcoholic Beverage Control Board* may impose a civil penalty in an
1140 amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000
1141 upon finding a violation of this chapter and may assess the tax due and any interest on the product
1142 acquired, possessed, sold, or offered for sale in violation of this chapter.

1143 C. For the purpose of enforcing this chapter, the Department *and the Alcoholic Beverage Control*
1144 *Board* may request or share information with any federal, state or local agency, including any agency of
1145 another state or local agency thereof.

1146 **2. That the Virginia State Crime Commission shall continue to study the issues relating to**
1147 **transferring the licensure of distributors of tobacco products, as those terms are defined in this**
1148 **act, from the Virginia Department of Taxation to the Alcoholic Beverage Control Board in**
1149 **accordance with this act to ensure that such transfer is accomplished in an efficient manner with**
1150 **minimum disruption of the regulated community.**

1151 **3. That §§ 4.1-103.01, 58.1-1007, 58.1-1021.04:1, 58.1-1021.04:2, and 58.1-1021.04:4 of the Code of**
1152 **Virginia are repealed.**

1153 **4. That § 58.1-1011 is repealed effective January 1, 2016.**

1154 **5. That the amendments to §§ 58.1-1003 and 58.1-1009 pursuant to this act shall become effective**
1155 **January 1, 2016. The remainder of the provisions of this act, except for the fourth enactment of**
1156 **this act, shall be effective in due course.**

1157 **6. That any regulations or guidelines established by the Tax Commissioner in accordance with**
1158 **Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia that are in effect as of July 1,**
1159 **2015, and that pertain to the subject of this act, shall be administered by the Alcoholic Beverage**
1160 **Control Board and remain in full force and effect until altered, amended, or rescinded by the**
1161 **Alcoholic Beverage Control Board.**

1162 **7. That any licenses issued by the Department of Taxation in accordance with Chapter 10**
1163 **(§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia before July 1, 2015, shall remain in full**
1164 **force and effect until the expiration of such license, at which time any renewal of such license shall**
1165 **be made in accordance with this act.**

1166 **8. The Alcoholic Beverage Control Board may take whatever administrative actions it deems**

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1167 necessary to prepare for the transfer of responsibilities to it in accordance with the provisions of
1168 this act regarding the stamping of tobacco products, including adopting any applicable regulations,
1169 but shall not take any action to enforce the provisions of Chapter 6 (§ 4.1-600 et seq.) of Title 4.1
1170 as added by this act relating to the tamping of tobacco products until on and after January 1,
1171 2016.

1172 9. That the Alcoholic Beverage Control Board shall develop and make available applications for
1173 retail dealer's licenses pursuant to the provisions of this act no later than July 1, 2016, and shall
1174 begin accepting such applications no later than January 1, 2017. However, no retail dealer's
1175 license issued by the Alcoholic Beverage Control Board shall become effective prior to July 1,
1176 2017. The Board may take whatever administrative actions it deems necessary to prepare for the
1177 responsibilities placed upon it in accordance with the provisions of this act, including adopting any
1178 applicable regulations, but shall not take any action to enforce the provisions of Chapter 6
1179 (§ 4.1-600 et seq.) of Title 4.1 as added by this act relating to the licensing of retail dealers until on
1180 and after July 1, 2017.

1181 10. That the provisions of this act shall not affect the validity of any license or permit issued by
1182 the Department of Taxation in accordance with Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of
1183 the Code of Virginia prior to July 1, 2015.

1184 11. That the Governor may transfer an appropriation or any portion thereof within a state agency
1185 established, abolished, or otherwise affected by this act, or from one such agency to another, to
1186 support the changes in organization or responsibility resulting from or required by the provisions
1187 of this act.

1188 12. The Alcoholic Beverage Control Board and the Department of Taxation shall conduct a review
1189 of the taxes imposed under Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia in
1190 order to determine what additional administrative responsibilities may be transferred and to
1191 jointly prepare any legislation that would be necessary to provide for such transfer on or before
1192 December 1, 2015.

1193 13. That the Department of Taxation and the Alcoholic Beverage Control Board shall work
1194 cooperatively with local fire marshals, wholesale dealers licensed by the Department of Taxation
1195 pursuant to Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 of the Code of Virginia, and other
1196 persons or organizations deemed appropriate to develop informational materials to advise tobacco
1197 products retail dealers, as defined in this act, of the necessity to obtain a license from the
1198 Alcoholic Beverage Control Board to sell such tobacco products at retail. Such informational
1199 material shall indicate that such tobacco products retail dealers shall be required to be licensed by
1200 July 1, 2017, in accordance with this act.

1201 14. That the provisions of this act may result in a net increase in periods of imprisonment or
1202 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
1203 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
1204 2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing
1205 Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated
1206 amount of the necessary appropriation cannot be determined for periods of commitment to the
1207 custody of the Department of Juvenile Justice.