

16101071D

HOUSE BILL NO. 627

Offered January 13, 2016

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A BILL to amend and reenact §§ 58.1-1000, 58.1-1021.01 through 58.1-1021.03, 58.1-1021.04:1 through 58.1-1021.04:5, 58.1-3830, 58.1-3831, 58.1-3840, and 58.1-3907 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1, relating to establishing state and local taxes on vapor products.

Patrons—Krizek; Senator: Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000, 58.1-1021.01 through 58.1-1021.03, 58.1-1021.04:1 through 58.1-1021.04:5, 58.1-3830, 58.1-3831, 58.1-3840, and 58.1-3907 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1 as follows:

§ 58.1-1000. Definitions.

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

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

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

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

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

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

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

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes and who is properly registered as a retail trade with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1).

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

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

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

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

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

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

75 "Wholesale dealer" includes persons who are properly registered as tobacco product merchant
76 wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business
77 Registration Application (Form R-1) and who (i) sell cigarettes at wholesale only to retail dealers for the
78 purpose of resale only or (ii) sell at wholesale to institutional, commercial, or industrial users.
79 "Wholesale dealer" also includes chain store distribution centers or houses which distribute cigarettes to
80 their stores for sale at retail.

81 Article 2.1.

82 Tobacco and Vapor Products Tax.

83 § 58.1-1021.01. Definitions.

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

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

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

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

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

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

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

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

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

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

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

119 "Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

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

Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall also include loose leaf tobacco. *"Tobacco products" does not include any vapor product.*

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

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

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

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

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

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

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

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

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

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

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

4. *Upon vapor products, at the rate of 15 percent of the manufacturer's sales price of such products.*

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

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

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

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

Each manufacturer that ships tobacco *or vapor* products to any person located in the Commonwealth shall file a report with the Department no later than the twentieth of each month identifying all such shipments made by the manufacturer during the preceding month. The Department may allow such reports to be filed electronically. Such reports shall identify the names and addresses of the persons within the Commonwealth to whom the shipments were made and the quantities of tobacco *or vapor* products shipped, by type of product and brand. The Tax Commissioner may authorize any manufacturer to file such reports for a period less frequently than monthly when, in the opinion of the Tax Commissioner, doing so would improve the efficiency of the administration of the tax imposed by this article. If a manufacturer is allowed to file other than on a monthly basis, each such report shall be due no later than the twentieth day of the month that immediately follows the close of the reporting period. Each such report shall contain the same information as required herein for monthly reporting.

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

A. Every distributor subject to the tax imposed under this article shall file a monthly return no later than the twentieth of each month on a form prescribed by the Department, covering the purchase of

182 tobacco *or vapor* products by such distributor during the preceding month, for which tax is imposed
183 pursuant to subsection A of § 58.1-1021.02, during the preceding month. Each return shall show the
184 quantity and manufacturer's sales price of each tobacco *or vapor* product (i) brought, or caused to be
185 brought, into the Commonwealth for sale; and (ii) made, manufactured, or fabricated in the
186 Commonwealth for sale in the Commonwealth during the preceding calendar month. Every licensed
187 distributor outside the Commonwealth shall in a like manner file a return showing the quantity and
188 manufacturer's sales price of each tobacco *or vapor* product shipped or transported to retailers in the
189 Commonwealth to be sold by those retailers, during the preceding calendar month. The return shall be
190 made on forms furnished or prescribed by the Department and shall contain or be accompanied by such
191 further information as the Department shall require. The distributor, at the time of filing the return, shall
192 pay to the Department the tax imposed under subsection A of § 58.1-1021.02 for each such package *or*
193 *unit* of tobacco *or vapor* product purchased in the preceding month on which tax is due.

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

198 The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all
199 discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be
200 taken into consideration in preparing the official estimate of the total revenues to be collected during the
201 fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding
202 available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be
203 made up by the general fund.

204 **§ 58.1-1021.04:1. Distributor's license; penalty.**

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

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

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

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

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

217 B. A person outside the Commonwealth who ships or transports tobacco *or vapor* products to
218 retailers in the Commonwealth, to be sold by those retailers, may make application for license as a
219 distributor, be granted such a license by the Department, and thereafter be subject to all the provisions
220 of this article. Once a license is granted pursuant to this section, such person shall be entitled to act as a
221 licensed distributor and, unless such person maintains a registered agent pursuant to Chapter 9
222 (§ 13.1-601 *et seq.*), 10 (§ 13.1-801 *et seq.*), 12 (§ 13.1-1000 *et seq.*), or 14 (§ 13.1-1200 *et seq.*) of
223 Title 13.1 or Chapter 2.1 (§ 50-73.1 *et seq.*) or 2.2 (§ 50-73.79 *et seq.*) of Title 50, shall be deemed to
224 have appointed the Clerk of the State Corporation Commission as the person's agent for the purpose of
225 service of process relating to any matter or issue involving the person and arising under the provisions
226 of this article.

227 The Department shall conduct a background investigation, to include a Virginia Criminal History
228 Records search, and fingerprints of the applicant, or the responsible principals, managers, and other
229 persons engaged in handling tobacco *or vapor* products at the licensable locations, that shall be
230 submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records
231 search necessary, on applicants for licensure as tobacco *or vapor* products distributors. The Department
232 may refuse to issue a distributor's license or may suspend, revoke or refuse to renew a distributor's
233 license issued to any person, partnership, corporation, limited liability company or business trust, if it
234 determines that the principals, managers, and other persons engaged in handling tobacco *or vapor*
235 products at the licensable location of the applicant have been (i) found guilty of any fraud or
236 misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny,
237 embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii)
238 convicted of a felony. Anyone who knowingly and willfully falsifies, conceals or misrepresents a
239 material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or
240 representation in any application for a distributor's license to the Department, shall be guilty of a Class 1
241 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be
242 retained by the Department to be applied to the administrative and other costs of processing distributor's
243 license applications, conducting background investigations and issuing distributor's licenses. Any amount

collected pursuant to this section in excess of such costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury.

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

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

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

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

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

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

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

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

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

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

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

B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale tobacco *or vapor* products upon which the tax imposed by this article has not been paid shall be required to pay any tax owed pursuant to this article. In addition, if such person imports, transports, or possesses such tobacco *or vapor* products in such a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article, he shall be required to pay a civil penalty of (i) \$2.50 per tobacco *or vapor* product, up to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco *or vapor* product, up to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco *or vapor* product, up to \$50,000, for the third or subsequent

violation by the person within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this article, such person shall be required to pay a civil penalty of \$25 per tobacco or vapor product, up to \$250,000.

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

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

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

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

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

The Tax Commissioner shall establish guidelines and rules, including record keeping requirements, for implementation of the tax taxes on tobacco and vapor products under Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia this article. The establishment of the guidelines and rules by the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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

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

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

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

C. Any county, city, or town that had the authority prior to January 1, 1977, to impose a tax upon the sale or use of cigarettes may by ordinance impose a tax on the sale or use of a vapor product. The tax shall be imposed as a percentage of the manufacturer's sales price of the vapor product, with such percentage determined by the governing body of the county, city, or town.

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

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

A. Fairfax and Arlington Counties shall have the power to levy tax upon the sale or use of cigarettes. Such tax shall be in such amount and on such terms as the governing body may by ordinances prescribe, not to exceed five cents per pack or the amount levied under state law, whichever is greater. The provisions of subsections B and D of § 58.1-3830 shall apply to any cigarette tax imposed by such counties, mutatis mutandis.

B. Fairfax and Arlington Counties may impose a tax on the sale or use of a vapor product. The tax shall be imposed as a percentage of the manufacturer's sales price of the vapor product. However, such tax shall not exceed the rate of the state tax on vapor products imposed under subdivision A 4 of § 58.1-1021.02. The provisions of subsection D of § 58.1-3830 shall apply to any vapor products tax imposed by such counties, mutatis mutandis.

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

367 *products.*

368 A. 1. Any county, city, or town imposing a tax upon the sale or use of vapor products may by
 369 ordinance provide for the administration and enforcement of any such tax. The ordinance may provide
 370 for the registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or
 371 possessing vapor products within or transporting vapor products within or into such taxing jurisdiction
 372 for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company
 373 authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the
 374 average monthly liability of such person. The county, city, or town may revoke any registration if such
 375 bond is impaired, but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other
 376 person that has no business location or residence in the county, city, or town and that sells, stores, or
 377 possesses in the county, city, or town any vapor products shall, by virtue of such sale, storage, or
 378 possession, submit the person to the legal jurisdiction of the locality and appoint as the person's
 379 attorney for any service of lawful process such officer or person as may be designated in the local
 380 ordinance for such purpose. A copy of any process served on the officer or person shall be sent
 381 forthwith by registered mail to the distributor, wholesaler, vendor, retailer, or other person.

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

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

391 **§ 58.1-3840. Certain excise taxes permitted.**

392 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town
 393 having general taxing powers established by charter pursuant to or consistent with the provisions of §
 394 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel
 395 campgrounds. Such city or town may also impose an excise tax on vapor products as defined under
 396 § 58.1-1021.01, with such tax imposed as a percentage of the manufacturer's sales price, as defined
 397 under § 58.1-1021.01, of such products. No such taxes on meals may be imposed on (i) that portion of
 398 the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal;
 399 (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by
 400 the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory
 401 gratuity or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold
 402 through vending machines or on any tangible personal property purchased with food coupons issued by
 403 the United States Department of Agriculture under the Food Stamp Program or drafts issued through the
 404 Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals
 405 may be imposed when sold or provided by (a) restaurants, as such term is defined in subdivision 9 a of
 406 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
 407 volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or
 408 other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three
 409 times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per
 410 calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising
 411 activity, the gross proceeds of which are to be used by such church, religious body or organization
 412 exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that
 413 serve meals for their members as a regular part of their religious observances; (d) public or private
 414 elementary or secondary schools, or public or private colleges and universities, to their students or
 415 employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care
 416 facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm,
 417 handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes
 418 or residences with restaurants, not open to the public, where meals are served and fees are charged for
 419 such food and beverages and are included in rental fees.

420 Also, the tax shall not be levied on meals: ~~(a)~~ (1) when used or consumed and paid for by the
 421 Commonwealth, any political subdivision of the Commonwealth, or the United States; ~~or~~ ~~(b)~~ (2)
 422 provided by a public or private nonprofit charitable organization or establishment to elderly, infirm,
 423 blind, handicapped, or needy persons in their homes, or at central locations; or ~~(c)~~ (3) provided by
 424 private establishments that contract with the appropriate agency of the Commonwealth to offer food,
 425 food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind,
 426 handicapped, or needy persons in their homes or at central locations.

427 In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business

enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

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

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

D. [Expired.]

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

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

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

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

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

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

2. That the provisions of this act shall become effective on January 1, 2017.