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HOUSE BILL NO. 2056

Offered January 11, 2017

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A *BILL to amend and reenact §§ 32.1-360, 32.1-366, 58.1-1000, 58.1-1021.01 through 58.1-1021.03, 58.1-1021.04:1 through 58.1-1021.05, 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.*

Patron—Kory

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-360, 32.1-366, 58.1-1000, 58.1-1021.01 through 58.1-1021.03, 58.1-1021.04:1 through 58.1-1021.05, 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:

§ 32.1-360. Virginia Tobacco Settlement Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Tobacco Settlement Fund. The Fund shall be established on the books of the Comptroller and receive revenue pursuant to subsection A of § 58.1-1021.05. Subject to the sale of all or any portion of the Foundation Allocation, 10 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In the event of such sale (i) the Foundation Allocation shall be paid in accordance with the agreement for the period of sale and (ii) the fund shall receive amounts withdrawn from the Endowment in accordance with § 32.1-361.1. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Board or his designee. Moneys in the Fund shall be used for the purposes of discouraging, eliminating or preventing the use of tobacco products by minors, including but not limited to educational and awareness programs on the health effects of tobacco use on minors and laws restricting the distribution of tobacco products to minors. Moneys may also be used for the purpose of reducing childhood obesity, including but not limited to educational and awareness programs, implementing evidence-based practices, and assisting schools and communities with related policies and programs.

§ 32.1-366. Virginia Health Care Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Health Care Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.

B. All revenue received by the Commonwealth pursuant to the provisions of (i) §§ 58.1-1001 and 58.1-1018, (ii) ~~Article 2-1 (§ 58.1-1021.01 et seq.) of Chapter 40 of Title 58.1~~ subsection B of § 58.1-1021.05, and (iii) § 3.2-4203 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also deposit 40 percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with tobacco product manufacturers, as defined in § 3.2-3100, to the Fund. The Fund shall also consist of all recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that would otherwise be deposited to the general fund of the state treasury.

§ 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

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§ 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.

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

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

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

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

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

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

Article 2.1.

Tobacco and Vapor Products Tax.

§ 58.1-1021.01. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

"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 includes loose leaf tobacco. "Tobacco products" does not include any vapor product.

"Vapor product" means an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, that is nonlighting and noncombustible and employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce aerosol in a solution regardless of whether the product or device is refillable, reusable, and rechargeable, or designed for limited use or a single use. "Vapor product" includes consumable vapor products and any vapor cartridge or other container of solution or other form that is intended to be used with or in such products or devices. Vapor product does not include home humidifiers and other similar products.

§ 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

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

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

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

189 4. *Upon vapor products, at the rate of \$0.05 per fluid milliliter of consumable vapor product and 10*
190 *percent of the retail dealers's sales price of non-consumable vapor products and devices including*
191 *electronic cigarettes, electronic cigars and similar devices and products.*

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

200 *Such tax on vapor products shall be imposed at the time the retail dealer sells vapor products to the*
201 *consumer. It is the intent and purpose of this article that the retailer who sells the vapor product shall*
202 *collect this tax on vapor products in the Commonwealth. It is further the intent and purpose of this*
203 *article to impose the tax once, and only, once, on all vapor products for sale in the Commonwealth.*

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

206 C. A distributor that calculates and pays the tax pursuant to (i) subdivision A 1 or A 2 in good faith
207 reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice or
208 (ii) subdivision A 4 in good faith reliance on the number of fluid milliliters listed by the manufacturer
209 on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or
210 penalties, solely by reason of a subsequent determination that such weight information was incorrect.

211 **§ 58.1-1021.02:1. Reports by manufacturers of tobacco and vapor products.**

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

223 **§ 58.1-1021.03. Monthly return and payments of tax.**

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

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

243 The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all

discounts allowed to retail or wholesale dealers pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366 *and by the Virginia Tobacco Settlement Fund established pursuant to § 32.1-360*. Any reduction in funding available for programs financed by the Virginia Health Care Fund *or the Virginia Tobacco Settlement Fund* as a result of such discounts shall be made up by the general fund.

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

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

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

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

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

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

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

The Department shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints of the applicant, or the responsible principals, managers, and other persons engaged in handling tobacco *or vapor* products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department deems a National Criminal Records search necessary, on applicants for licensure as tobacco *or vapor* products distributors. The Department may refuse to issue a distributor's license or may suspend, revoke, or refuse to renew a distributor's license issued to any person, partnership, corporation, limited liability company, or business trust, if it determines that the principals, managers, and other persons engaged in handling tobacco *or vapor* products at the licensable location of the applicant have been (i) found guilty of any fraud or misrepresentation in any connection; (ii) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or (iii) convicted of a felony. Anyone who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application for a distributor's license to the Department, ~~shall be~~ *is* guilty of a Class 1 misdemeanor. The Department may establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations, and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even numbered years shall be reported to the State Treasurer and deposited into the state treasury.

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

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

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

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

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

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

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

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

329 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
330 article shall be grounds for revocation of the license.

331 **§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco or vapor**
332 **products; civil penalty.**

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

343 B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale
344 tobacco *or vapor* products upon which the tax imposed by this article has not been paid shall be
345 required to pay any tax owed pursuant to this article. In addition, if such person imports, transports, or
346 possesses such tobacco *or vapor* products in such a manner as to knowingly and intentionally evade or
347 attempt to evade the tax imposed by this article, he shall be required to pay a civil penalty of (i) \$2.50
348 per tobacco *or vapor* product, up to \$500, for the first violation by the person within a 36-month period;
349 (ii) \$5 per tobacco *or vapor* product, up to \$1,000, for the second violation by the person within a
350 36-month period; and (iii) \$10 per tobacco *or vapor* product, up to \$50,000, for the third or subsequent
351 violation by the person within a 36-month period, to be assessed and collected by the Department as
352 other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the
353 tax levied under this article, such person shall be required to pay a civil penalty of \$25 per tobacco *or*
354 *vapor* product, up to \$250,000.

355 **§ 58.1-1021.04:4. Purchase of tobacco or vapor products for resale.**

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

- 358 1. A retail dealer purchases from a distributor licensed by the Commonwealth of Virginia.
359 2. A retail dealer applies for and is granted a license as a distributor, and files returns and maintains
360 records as required of licensed distributors under this article.

361 **§ 58.1-1021.04:5. Tax Commissioner to establish guidelines and rules.**

362 The Tax Commissioner shall establish guidelines and rules, including ~~record keeping~~ *recordkeeping*
363 requirements, for implementation of the ~~tax~~ *taxes* on tobacco *and vapor* products under ~~Article 2-4~~
364 ~~(§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of Virginia~~ *this article*. The
365 establishment of the guidelines and rules by the Tax Commissioner shall be exempt from the provisions
366 of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-1021.05. Use of revenues.

A. The revenues generated by the taxes imposed under this article on vapor products shall be collected by the Department and deposited into the Virginia Tobacco Settlement Fund established under § 32.1-360.

B. The remaining revenues generated by the taxes imposed under this article shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

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

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

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

"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 an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, that is nonlighting and noncombustible and employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce aerosol in a solution regardless of whether the product or device is refillable, reusable, and rechargeable, or designed for limited use or a single use. "Vapor product" includes consumable vapor products and any vapor cartridge or other container of solution or other form that is intended to be used with or in such products or devices. Vapor product does not include home humidifiers or other similar products.

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.

~~B.~~ 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 number of cents per fluid milliliter of consumable vapor product, with such amount to be determined by the governing body of the county, city, or town.

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 as a number of cents per fluid milliliter of consumable vapor product or a percentage of the retail dealer's sales price of a non-consumable 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 product 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 products.

A. 1. Any county, city, or town imposing a tax upon the sale or use of vapor products may by ordinance provide for the administration and enforcement of any such tax. The ordinance may provide for the registration of any distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing vapor products within or transporting vapor products within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company

428 authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the
429 average monthly liability of such person. The county, city, or town may revoke any registration if such
430 bond is impaired, but for no other reason. Any such distributor, wholesaler, vendor, retailer, or other
431 person that has no business location or residence in the county, city, or town and that sells, stores, or
432 possesses in the county, city, or town any vapor products shall, by virtue of such sale, storage, or
433 possession, submit the person to the legal jurisdiction of the locality and appoint as the person's
434 attorney for any service of lawful process such officer or person as may be designated in the local
435 ordinance for such purpose. A copy of any process served on the officer or person shall be sent
436 forthwith by registered mail to the distributor, wholesaler, vendor, retailer, or other person.

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

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

446 **§ 58.1-3840. Certain excise taxes permitted.**

447 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town
448 having general taxing powers established by charter pursuant to or consistent with the provisions of §
449 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel
450 campgrounds. Such city or town may also impose an excise tax on vapor products as defined in §
451 58.1-1021.01, with such tax imposed as a percentage of the manufacturer's sales price, as defined in §
452 58.1-1021.01, of such products. No such taxes on meals may be imposed on (i) that portion of the
453 amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii)
454 that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the
455 restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity
456 or service charge does not exceed ~~20%~~ 20 percent of the sales price; or (iii) food and beverages sold
457 through vending machines or on any tangible personal property purchased with food coupons issued by
458 the United States Department of Agriculture under the Food Stamp Program or drafts issued through the
459 Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals
460 may be imposed when sold or provided by (a) restaurants, as such term is defined in subdivision 9 a of
461 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
462 volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or
463 other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three
464 times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per
465 calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising
466 activity, the gross proceeds of which are to be used by such church, religious body or organization
467 exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that
468 serve meals for their members as a regular part of their religious observances; (d) public or private
469 elementary or secondary schools, or public or private colleges and universities, to their students or
470 employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care
471 facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm,
472 handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes
473 or residences with restaurants, not open to the public, where meals are served and fees are charged for
474 such food and beverages and are included in rental fees.

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

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

486 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
487 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
488 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
489 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 is~~, 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 is~~, 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, 2018.