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SENATE BILL NO. 1371

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 22, 2019)

(Patrons Prior to Substitute—Senators Norment and Reeves [SB 1252])

A BILL to amend and reenact §§ 58.1-1000 and 58.1-1021.01 of the Code of Virginia and to amend and reenact Item 3-5.17 of Chapter 2 of the Acts of Assembly, Special Session I, of 2018, relating to cigarette tax; definitions of noncombustible tobacco products; tobacco tax study.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000 and 58.1-1021.01 of the Code of Virginia are amended and reenacted 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 who is not duly qualified as a wholesale dealer stamping agent, but who possesses, or whose affiliate possesses, a valid cigarette exemption certificate issued pursuant to § 58.1-623.2; (iii) a stamping agent; (iv) a retail dealer who possesses, or whose affiliate possesses, a valid cigarette exemption certificate issued pursuant to § 58.1-623.2; (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) any criminal offense under this chapter; (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 as defined in § 58.1-1021.01; (c) any offense involving evasion or failure to pay a cigarette or tobacco 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. For the purposes of this definition, "affiliate" means any entity that is a member of the same affiliated group, as such term is defined in § 58.1-3700.1.

"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~~ and produces smoke from combustion 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 burned and 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" has the same meaning as provided in § 3.2-4204. For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" includes "distributor" as that term is defined in

60 § 58.1-1021.01.

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

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

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

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

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

80 **§ 58.1-1021.01. Definitions.**

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

82 *"Alternative nicotine product" means any noncombustible product containing nicotine that is not*
83 *made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or*
84 *ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product*
85 *or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under*
86 *Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.*

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

94 *"Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol (i)*
95 *by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by*
96 *heat generated from a combustion source that only or primarily heats rather than burns the tobacco.*

97 *"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is*
98 *sold, marketed, or intended for use in a nicotine vapor product.*

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

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

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

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

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

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

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

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

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

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any 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. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"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 loose leaf tobacco.

2. That Item 3-5.17 of Chapter 2 of the Acts of Assembly, Special Session I, of 2018, is amended and reenacted as follows:

Item 3-5.17

§ 3-5.17 TOBACCO TAX STUDY

The Joint Subcommittee to Evaluate Tax Preferences is hereby directed to ~~study~~ continue studying options for the modernization of § 58.1-1001(A), Code of Virginia, to reflect advances in science and technology in the area of tobacco harm reduction, and the role innovative non-combustible tobacco products can play in reducing harm, including products that produce vapor or aerosol from heating tobacco or liquid nicotine. In addition, the Joint Subcommittee shall study possible reforms to the taxation of tobacco products that will provide fairness and equity for all local governments and also ensure stable tax revenues for the Commonwealth. The Joint Subcommittee shall complete its study and submit a final report with recommended reforms to the Finance Committees of the Virginia Senate and Virginia House of Delegates by November 1, ~~2018~~ 2019. All agencies of the Commonwealth shall provide assistance for this study, upon request.