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HOUSE BILL NO. 1099

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Finance and Appropriations
on February 27, 2024)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 58.1-1000, 58.1-1001, and 58.1-1021.01 of the Code of Virginia, relating to cigarettes intended to be heated; heated tobacco products; taxation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000, 58.1-1001, 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 and produces smoke from combustion 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 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."

"Cigarette intended to be heated" means a cigarette containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

"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

60 other wholesale dealers for resale.

61 "Stamping agent" has the same meaning as provided in § 3.2-4204. For the purposes of provisions
62 relating to "roll-your-own" tobacco, "stamping agent" includes "distributor" as that term is defined in
63 § 58.1-1021.01.

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

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

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

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

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

83 **§ 58.1-1001. Tax levied; rate.**

84 A. 1. Except as provided in *subdivision 2* or subsection B, in addition to all other taxes now imposed
85 by law, every person within ~~this the~~ the Commonwealth who sells, stores, or receives cigarettes made of
86 tobacco or any substitute thereof, for the purpose of distribution to any person within ~~this the~~ the
87 Commonwealth, shall pay to ~~this the~~ the Commonwealth an excise tax of one and one-quarter mills on each
88 such cigarette sold, stored, or received before August 1, 2004; an excise tax of one cent on each such
89 cigarette sold, stored, or received on and after August 1, 2004, through midnight on June 30, 2005; ~~and~~
90 an excise tax of 1.5 cents on each such cigarette sold, stored, or received on and after July 1, 2005, *but*
91 *before July 1, 2020; and an excise tax of three cents on each cigarette sold, stored, or received on and*
92 *after July 1, 2020.*

93 2. *In addition to all other taxes now imposed by law, every person within the Commonwealth who*
94 *sells, stores, or receives cigarettes intended to be heated for the purpose of distribution to any person*
95 *within the Commonwealth shall pay to the Commonwealth an excise tax at the rate of 2.25 cents per*
96 *stick on each such cigarette intended to be heated that is sold, stored, or received on and after July 1,*
97 *2024.*

98 B. In addition to all other taxes now imposed by law, every person within the Commonwealth who
99 sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the
100 Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of ~~10%~~ 10 percent of
101 the manufacturer's sales price of such roll-your-own tobacco.

102 C. The revenues generated by the taxes imposed under this section on and after August 1, 2004,
103 shall be collected by the Department and deposited into the Virginia Health Care Fund established under
104 § 32.1-366.

105 D. The provisions of this section shall not apply to members of federal, state, county, city, or town
106 law-enforcement agencies when possession of unstamped cigarettes is necessary in the performance of
107 investigatory duties.

108 **§ 58.1-1021.01. Definitions.**

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

110 "Actual cost" means the actual price paid by a remote retail seller for each individual stock keeping
111 unit or SKU.

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

117 "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco,
118 other than any roll of tobacco that is a cigarette as such term is defined in § 58.1-1000.

119 "Consumer" means the person who is the end or final user of tobacco products.

120 "Distributor" means (i) any person engaged in the business of selling tobacco products in the
121 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the

Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Heated tobacco product" means a product *other than a cigarette intended to be heated, as such term is defined in § 58.1-1000*, containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

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

"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 *four* ounces but not more than 8 *eight* 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 *eight* 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 *four* ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

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

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

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

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

"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.

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

"Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

"Remote retail sale" means any sale of cigars or pipe tobacco to a consumer in the Commonwealth when (i) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the consumer when the request for the purchase or order is made, or (ii) the cigars or pipe tobacco are delivered to the consumer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the consumer when the buyer obtains possession of the cigars or pipe tobacco.

"Remote retail seller" means a person located within or outside of this state that makes remote retail sales of cigars or pipe tobacco.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers at retail in a transaction other than a remote retail sale.

"SKU" means an individual stock keeping unit identifier used for tracking inventory.

"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)

183 of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in
184 § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" ~~shall~~
185 also ~~include~~ *includes* loose leaf tobacco.
186 **2. That the Department of Taxation shall, to the extent practical, work to develop a stamp for the**
187 **purposes of the tax levied on cigarettes intended to be heated pursuant to subdivision A 2 of**
188 **§ 58.1-1001 of the Code of Virginia, as amended by this act. No cigarettes intended to be heated,**
189 **as defined in § 58.1-1000 of the Code of Virginia, as amended by this act, shall be certified in**
190 **accordance with § 3.2-4205 of the Code of Virginia until such stamp has been developed.**