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SENATE BILL NO. 1606

Offered January 9, 2019

Prefiled January 9, 2019

A *BILL to amend and reenact §§ 58.1-1000, 58.1-1021.01, 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 Title 58.1 a chapter numbered 10.2, consisting of sections numbered 58.1-1038 through 58.1-1049, and by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1, relating to vapor product tax; School Mental Health Counselors Fund created; Quit Now Virginia Fund created; penalties.*

Patron—Ebbin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000, 58.1-1021.01, 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 Title 58.1 a chapter numbered 10.2, consisting of sections numbered 58.1-1038 through 58.1-1049, and 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 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 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." "Cigarette" does not include a vapor product, as defined in § 58.1-1038.

"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

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59 sells or offers for sale any cigarettes and who is properly registered as a retail trade with the
60 Commonwealth in accordance with the Virginia Department of Taxation Business Registration
61 Application (Form R-1).

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

64 "Stamping agent" has the same meaning as provided in § 3.2-4204. For the purposes of provisions
65 relating to "roll-your-own" tobacco, "stamping agent" includes "distributor" as that term is defined in
66 § 58.1-1021.01.

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

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

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

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

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

86 **§ 58.1-1021.01. Definitions.**

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

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

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

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

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

105 3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less
106 than 4 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 "Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco
110 products to a distributor.

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

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

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

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

120 "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. *"Tobacco product" does not include a vapor product, as defined in § 58.1-1038.*

CHAPTER 10.2. VAPOR PRODUCT TAX.

§ 58.1-1038. Definitions.

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

"Retail dealer" means any person, other than a wholesale dealer, that sells or offers for sale any vapor products and that 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.

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

"Use" means the exercise of any right or power over vapor products incident to the ownership thereof or by any transaction where possession is given, except the sale of vapor products in the regular course of business.

"Vapor product" means any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor 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 (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wholesale dealer" means any person that is properly registered as a vapor product merchant wholesaler with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1) and that (i) sells vapor products at wholesale only to retail dealers for the purpose of resale only or (ii) sells at wholesale to institutional, commercial, or industrial users. "Wholesale dealer" includes chain store distribution centers or houses that distribute vapor products to their stores for sale at retail.

§ 58.1-1039. Tax levied; rate.

A. In addition to all other taxes now imposed by law, there is imposed a tax on every retail dealer within the Commonwealth that sells, stores, or receives vapor products for the purpose of distribution to any person within the Commonwealth. Such tax shall be imposed at a rate of 40 percent of the price paid to a wholesale dealer by a retail dealer. The taxes levied by this section and Article 7 (§ 58.1-3030) of Chapter 38 shall be collectible from wholesale dealers, which shall be required to register pursuant to § 58.1-1040.

B. Any product subject to tax under the provisions of Chapter 10 (§ 58.1-1000 et seq.) shall not be subject to tax or regulation under the provisions of this chapter. Any vapor product subject to tax under the provisions of this chapter shall not be subject to tax or regulation under the provisions of Chapter 10 (§ 58.1-1000 et seq.).

C. The revenues generated by the taxes imposed under this chapter shall be collected by the Department and distributed as follows:

1. Ninety percent to the School Mental Health Counselors Fund created pursuant to § 58.1-1048; and

2. Ten percent to the Quit Now Virginia Fund created pursuant to § 58.1-1049.

§ 58.1-1040. Collection of tax by wholesale dealers; civil penalty.

A. The taxes imposed by this chapter shall be collected and remitted to the Department by wholesale dealers. Every wholesale dealer shall at the time of shipping or delivering any vapor product make and retain a true duplicate invoice of the same, which shall show full and complete details of the sale or delivery of the taxable article. All wholesale dealers shall keep a record of such transactions and retain all books, records, and memoranda pertaining to such transactions for a period of five years, and such records shall be subject to examination by the Department upon request.

B. Every wholesale dealer shall be required to file a report between the first and twentieth of each month, covering all sales taxable under this chapter during the preceding month. The report shall (i) list the types of vapor products and brand information for such products sold during the preceding month; (ii) list the name and address of both the retail dealer to which the vapor products were sold and the entity from which the vapor products were obtained; and (iii) include the required documentation for

and detail the amount and source of any bad debt deductions being taken pursuant to § 58.1-1041. The Department may allow such reports to be filed electronically.

C. 1. For the purpose of compensating wholesale dealers for accounting for the tax imposed under this chapter, such wholesale dealers shall be allowed when filing a monthly return and remitting the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

2. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to wholesale dealers pursuant to this subsection and report such amount to the Chairmen of the House Appropriations Committee and the Senate Finance Committee.

D. Any wholesale dealer that fails or refuses to comply with any of the above provisions shall be prohibited from selling vapor products until such time as the Commissioner is satisfied that such wholesale dealer has returned to compliance with such provisions. A wholesale dealer may be subject to a civil penalty of \$500 for each day after the due date that it fails or refuses to file a required report. The penalty shall be assessed and collected by the Department as other taxes are collected.

§ 58.1-1041. Deduction of bad debt by wholesale dealers.

A. As used in this section, "bad debt" means the taxes under this chapter attributable to any portion of a debt that is related to a sale of vapor products subject to tax under this chapter that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time period between the date when taxes accrue to the Department for the wholesale dealer's preceding tax return and the date when taxes accrue to the Department for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the wholesale dealer kept accounts on an accrual basis, as a deduction pursuant to § 166 of the Internal Revenue Code. "Bad debt" does not include (i) any interest on the wholesale price of vapor products, (ii) uncollectible amounts on property that remains in the possession of the wholesale dealer until the full purchase price is paid, (iii) expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, (iv) any accounts receivable that have been sold to a third party for collection, or (v) repossessed property.

B. Any wholesale dealer may deduct the amount of bad debts from the tax imposed by this chapter. The amount deducted shall be charged off as uncollectible on the books of the wholesale dealer. If a person pays all or part of a bad debt that a wholesale dealer claimed as a deduction under this section, the wholesale dealer shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes together with its next report to the Department pursuant to § 58.1-1040.

C. Any claim for a bad debt deduction under this section shall be supported by all of the following:

1. A copy of the original invoice;

2. Evidence that the vapor products described in the invoice were delivered to the retail dealer that ordered them; and

3. Evidence that the retail dealer that ordered and received the vapor products did not pay the wholesale dealer for the vapor products and that the wholesale dealer used reasonable collection practices in attempting to collect the debt.

§ 58.1-1042. Materially false statements in reports; penalty.

Any wholesale dealer or retail dealer, or any officer, employee, or agent of any such entity, that knowingly and with the intent to defraud, mislead, or deceive makes any materially false statement in any record required by this chapter is guilty of a Class 1 misdemeanor. Each record kept and each report or return filed containing one or more false statements shall constitute a separate offense.

§ 58.1-1043. Sales out-of-state, to the United States, and in foreign commerce; penalties.

A. A wholesale dealer may sell vapor products without collecting the taxes imposed under this chapter, provided that:

1. Such vapor products are sold and shipped or delivered in interstate commerce to a person outside the Commonwealth;

2. Such vapor products are sold to a person that is engaged in business as a dealer in vapor products in another state;

3. Such vapor products are purchased exclusively for resale in the other state; and

4. The wholesale dealer retains a record of each such sale, the original purchase order, a copy of the invoice therefor, and a receipt from the purchaser showing that such purchase was made exclusively for resale in the other state. If upon examination of invoices of any wholesale dealer, such dealer is unable to furnish such records to the Department, the prima facie presumption shall arise that such vapor products were sold in violation of this section.

B. A wholesale dealer may sell vapor products without collecting the taxes imposed under this chapter, provided that such vapor products are sold to the United States or to any instrumentality thereof for resale to or for use or consumption by members of the Armed Forces of the United States, or when sold to the Veterans Canteen Service of the U.S. Department of Veterans Affairs for resale to veterans of the Armed Forces of the United States who are hospitalized or domiciled in hospitals and

homes of the U.S. Department of Veterans Affairs, provided that the books and records, including original purchase orders and copies of invoices showing such sales, are kept on file.

C. A wholesale dealer may sell vapor products without collecting the taxes imposed under this chapter, provided that such vapor products are sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in the Commonwealth and points outside of the Commonwealth for resale to or for use or consumption upon such ship or in foreign commerce.

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

E. A failure to comply with any provision of this section shall subject the wholesale dealer to the payment of the tax thereon imposed by this chapter. The Department may impose a penalty, to be assessed and collected by the Department as other taxes are collected, of up to \$500 per transaction on any wholesale dealer it finds not in compliance with any provision of this section. Any person that violates any of the provisions of this section is guilty of a Class 2 misdemeanor.

§ 58.1-1044. Qualification for a wholesale dealer's permit; penalty.

A. It shall be unlawful for any person to sell vapor products without first obtaining a wholesale dealer's permit from the Department. Every person that desires to obtain a wholesale dealer's permit shall apply to the Department on forms prescribed for this purpose, which shall be supplied upon request. The application forms will require such information relative to the nature of business engaged in by the applicant as the Department deems necessary to the qualifying of the applicant. The Department shall conduct a background investigation, to include a Virginia criminal history records search, and fingerprints of the applicant, or its responsible principals, managers, and other persons engaged in handling vapor products at the licensable locations, that shall be submitted to the Federal Bureau of Investigation if the Department determines a National Criminal Records search is necessary on permit applicants.

B. The Department may refuse to issue a wholesale dealer's permit or may suspend, revoke, or refuse to renew a wholesale dealer's permit issued to any person, partnership, corporation, limited liability company, or business trust, if it determines that any principal, manager, or other person engaged in handling vapor products at the licensable location of the applicant has 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. Any person that 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 is guilty of a Class 1 misdemeanor.

C. 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 applications, conducting background investigations, and issuing permits. Any application or renewal fees 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. If the Department after review of an application believes the applicant is qualified, the Department shall issue to the applicant a wholesale dealer's permit.

D. Permits 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.

E. The Department may promulgate regulations governing the issuance, suspension, and revocation of wholesale dealer's permits. The Department may at any time revoke a permit issued to any wholesale dealer that is not in compliance with any of the provisions of this chapter or any of the rules of the Department adopted and promulgated under authority of this chapter.

F. The Department shall compile and maintain a list of wholesale dealers. The list shall be updated monthly and shall be available upon request to any federal, state, or local law-enforcement agency.

§ 58.1-1045. Administration and enforcement of tax.

The Department shall administer and enforce the tax imposed under this chapter. It shall have the power to enter upon the premises of any person and to examine, or cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records, invoices, or memoranda, etc., bearing upon the amount of taxes payable and to secure other information directly or indirectly concerned in the enforcement of this chapter.

§ 58.1-1046. Use tax imposed on storage, use, or consumption of vapor products; exemption of products on which sales tax has been paid.

A. An excise tax is hereby imposed on the storage, use, or other consumption in the Commonwealth of vapor products purchased at retail at a rate equal to that set out in § 58.1-1039. Every person storing, using, or otherwise consuming in the Commonwealth vapor products purchased at retail shall be liable for the tax imposed by this chapter, and the liability shall not be extinguished until the tax has been paid to the Commonwealth; however, if the tax imposed under § 58.1-1039 has been paid by the

seller of such vapor products, then the tax imposed by this section shall not be due.

B. The revenues generated by the tax imposed under this section shall be distributed in accordance with the provisions of subsection C of § 58.1-1039.

§ 58.1-1047. Monthly returns and payment of use tax.

Every person owning or having in his possession or custody vapor products the storage, use, or other consumption of which is subject to the tax imposed by this chapter shall, on or before the tenth day of the month following, file with the Department a return for the preceding month in such form as may be prescribed by the Department showing the vapor products purchased by such person and such other information as the Department may deem necessary for the proper administration of this chapter. The return shall be accompanied by a remittance of the amount of tax herein imposed.

§ 58.1-1048. School Mental Health Counselors Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the School Mental Health Counselors Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All tax revenue accruing to the Fund pursuant to the provisions of § 58.1-1039, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. 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.

B. Moneys in the Fund shall be used solely for the purposes of funding the state's share of Standards of Quality costs related to increasing the ratio of school counselors to students, subject to appropriation by the General Assembly.

§ 58.1-1049. Quit Now Virginia Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Quit Now Virginia Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All tax revenue accruing to the Fund pursuant to the provisions of § 58.1-1039, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. 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.

B. Moneys in the Fund shall be used solely for the purposes of funding the Virginia Department of Health's costs to provide phone-based and Internet-based services with the purpose of discouraging and eliminating the use of tobacco products and providing counseling and support for smoking cessation efforts, subject to appropriation by the General Assembly.

Article 7.

Cigarette and Vapor Product Tax.

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

A. 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. Any county, city, or town that had the power 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.

C. Any county cigarette 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 or vapor product tax. However, if the governing body of any such town shall provide that a county cigarette or vapor product tax, as well as the town cigarette or vapor product tax, shall apply within the limits of such town, then such cigarette or vapor product tax may be imposed by the county within such town.

D. For purposes of this article, "vapor product" means the same as such term is defined in § 58.1-1038.

§ 58.1-3831. Tax in certain 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 A and C of § 58.1-3830 shall apply to any cigarette tax imposed by such counties, mutatis mutandis.

B. Fairfax and Arlington Counties shall have the power to levy tax upon the sale or use of vapor products. The tax shall be at a rate and on such terms as the governing body may by ordinances prescribe, but shall not exceed the rate of the state tax on vapor products imposed under state law. The provisions of subsection C 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 products; penalty.

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

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

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

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on vapor products as defined in § 58.1-3838, cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools or institutions of higher education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a

428 public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped,
429 or needy persons in their homes, or at central locations; or (3) provided by private establishments that
430 contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages
431 for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons
432 in their homes or at central locations.

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

437 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
438 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
439 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
440 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
441 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
442 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

447 D. [Expired.]

448 **§ 58.1-3907. Willful failure to collect and account for tax; penalty.**

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

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

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

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

467 E. For purposes of this section, "vapor product" means the same as that term is defined in
468 § 58.1-3838.