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**HOUSE BILL NO. 1099**

Offered January 10, 2024

Prefiled January 10, 2024

*A BILL to amend and reenact §§ 58.1-1000, 58.1-1001, and 58.1-1021.01 of the Code of Virginia and Item 3-5.21 of Chapter 1 of the Acts of Assembly of 2023, Special Session I, relating to heated tobacco; taxation.*

Patrons—Kilgore and Watts

Referred to Committee on Finance

**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."

"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

59 other wholesale dealers for resale.

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

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

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

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

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

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

82 **§ 58.1-1001. Tax levied; rate.**

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

90 2. *In addition to all other taxes now imposed by law, every person within the Commonwealth who*  
91 *sells, stores, or receives cigarettes intended to be heated for the purpose of distribution to any person*  
92 *within the Commonwealth shall pay to the Commonwealth an excise tax at the rate of 2.25 cents per*  
93 *stick on each such cigarette sold, stored, or received on and after July 1, 2021.*

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

98 C. The revenues generated by the taxes imposed under this section on and after August 1, 2004,  
99 shall be collected by the Department and deposited into the Virginia Health Care Fund established under  
100 § 32.1-366.

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

104 **§ 58.1-1021.01. Definitions.**

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

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

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

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

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

116 "Distributor" means (i) any person engaged in the business of selling tobacco products in the  
117 Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the  
118 Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or  
119 stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged  
120 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 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) 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 3-5.21 of Chapter 1 of the Acts of Assembly of 2023, Special Session I, is amended**

182 and reenacted as follows:

183 § 3-5.21 CIGARETTE TAX, TOBACCO PRODUCTS TAX AND TAX ON LIQUID NICOTINE

184 A. Notwithstanding any other provision of law, the cigarette tax imposed under subsection A of  
185 § 58.1-1001 of the Code of Virginia shall be 3.0 cents on each cigarette sold, stored or received on and  
186 after July 1, 2020.

187 B. *Notwithstanding any other provision of law, the cigarette tax imposed under subsection A of §*  
188 *58.1-1001 of the Code of Virginia shall be imposed on any cigarette intended to be heated at the rate of*  
189 *2.25 cents per stick beginning January 1, 2021 for taxable sales or purchases occurring on and after*  
190 *such date.*

191 C. Notwithstanding any other provision of law, the rates of the tobacco products tax imposed under  
192 § 58.1-1021.02 of the Code of Virginia in effect on June 30, 2020 shall be doubled beginning July 1,  
193 2020 for taxable sales or purchases occurring on and after such date.

194 C. D. Notwithstanding any other provision of law, the tobacco products tax imposed under §  
195 58.1-1021.02 of the Code of Virginia shall be imposed on liquid nicotine at the rate of \$0.066 per  
196 milliliter beginning July 1, 2020 for taxable sales or purchases occurring on and after such date.

197 D. ~~Notwithstanding any other provision of law, the tobacco products tax imposed under~~  
198 ~~§ 58.1-1021.02 of the Code of Virginia shall be imposed on any heated tobacco product at the rate of~~  
199 ~~2.25 cents per stick beginning January 1, 2021 for taxable sales or purchases occurring on and after such~~  
200 ~~date.~~

201 E. The Tax Commissioner shall establish guidelines and rules for (i) transitional procedures in regard  
202 to the increase in the cigarette tax, (ii) implementation of the increased tobacco products tax rates, and  
203 (iii) implementation of the tobacco products tax on liquid nicotine pursuant to the provisions of this act.  
204 The development of such guidelines and rules by the Tax Commissioner shall be exempt from the  
205 provisions of the Administrative Process Act (Code of Virginia § 2.2-4000 et seq.)

206 F. Notwithstanding any other provision of law, beginning January 1, 2021, for the purposes of the  
207 Tobacco Products Tax, a Distributor, as defined in § 58.1-1021.01, shall be deemed to have sufficient  
208 activity within the Commonwealth to require registration under § 58.1-1021.04:1, if such distributor:

209 1. Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by  
210 federal law, from sales of tobacco products in the Commonwealth in the previous or current calendar  
211 year, provided that in determining the amount of a dealer's gross revenues, the sales made by all  
212 commonly controlled persons as defined in subsection D of § 58.1-612 shall be aggregated; or

213 2. Engages in 200 or more separate tobacco products sales transactions, or other minimum amount as  
214 may be required by federal law, in the Commonwealth in the previous or current calendar year, provided  
215 that in determining the total number of a dealer's retail sales transactions, the sales made by all  
216 commonly controlled persons as defined in subsection D of § 58.1-612 shall be aggregated.