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HOUSE BILL NO. 1357

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 7, 2022)

(Patron Prior to Substitute—Delegate Runion)

A BILL to amend and reenact §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1021.02:2, relating to tax on cigars.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1021.02:2 as follows:

§ 58.1-1021.01. Definitions.

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

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

"Cigar" means the same as such term is defined in § 5702(a) of the Internal Revenue Code, and as such section may be amended.

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

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

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products *or cigars* 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.

"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 *or cigars* 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.

§ 58.1-1021.02. Tax on tobacco 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 products *other than cigars* 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

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

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

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

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

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

C. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

D. *No tax shall be imposed pursuant to this section on cigars, which shall be taxed pursuant to § 58.1-1021.02:2.*

§ 58.1-1021.02:2. Tax on cigars.

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 cigars in the Commonwealth by any person engaged in business as a distributor thereof, at a rate equal to 10 percent of the manufacturer's sales price of such cigars or \$0.30 per cigar, whichever is less.*

Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the Commonwealth from outside the Commonwealth cigars for sale; (ii) makes, manufactures, or fabricates cigars in the Commonwealth for sale in the Commonwealth; or (iii) ships or transports cigars to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose of this article that the distributor who first possesses the cigar subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to impose the tax once,

122 *and only once, on all cigars for sale in the Commonwealth.*

123 *B. No tax shall be imposed pursuant to this section upon cigars not within the taxing power of the*
124 *Commonwealth under the Commerce Clause of the Constitution of the United States.*

125 *C. A distributor that calculates and pays the tax pursuant to subsection A in good faith reliance on*
126 *the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be*
127 *liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that*
128 *such weight information was incorrect.*