

HOUSE BILL NO. 1417

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on January 18, 2023)

(Patron Prior to Substitute--Delegate Ware)

A BILL to amend and reenact §§ 58.1-1021.01 and 58.1-1021.02 of the Code of Virginia, 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 as follows:

§ 58.1-1021.01. Definitions.

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

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

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

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

"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_of 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

27 the business of selling tobacco products outside of the Commonwealth who ships or transports tobacco
28 products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail
29 dealer in possession of untaxed tobacco products in the Commonwealth.

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

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

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

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

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

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

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

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

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

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

58 "Nicotine vapor product" means any noncombustible product containing nicotine that employs a
59 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
60 regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form.

61 "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic
62 pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other
63 form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,
64 electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product
65 regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic
66 Act.

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

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

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

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

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

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

83 "Tobacco product" or "tobacco products" means (i) ~~"cigar" as defined in § 5702(a) of the Internal~~
84 ~~Revenue Code, and as such section may be amended~~ cigars; (ii) "smokeless tobacco" as defined in §
85 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iii) ~~"pipe tobacco" as~~
86 ~~defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended~~ pipe tobacco.

87 "Tobacco products" ~~shall also include~~ includes loose leaf tobacco.

88 **§ 58.1-1021.02. Tax on tobacco products.**

89 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the
90 privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in
91 business as a distributor or remote retail seller thereof, at the following rates:

92 1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the
93 same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed
94 by the manufacturer on the package in accordance with federal law.

95 2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf
96 tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax
97 shall be imposed on the distributor for loose leaf tobacco as follows:

98 a. \$0.21 for each loose leaf tobacco single-unit;

99 b. \$0.40 for each loose leaf tobacco half pound-unit;

100 c. \$0.70 for each loose leaf tobacco pound-unit; and

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

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

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

108 4. Upon cigars, at the rate of 10 percent of the manufacturer's sales price of such cigars or \$0.30
109 per cigar, whichever is less.

110 Upon cigars and pipe tobacco products sold by remote retail sellers, the tax rates delineated in ~~this~~
111 subdivision 3 or 4 shall apply to:

112 ~~(a)~~-a. The actual cost; or

113 ~~(b)~~-b. If the actual cost is not available, the average of the actual cost over the 12 calendar months
114 before January 1 of the year in which the sale occurs.

115 Such tax shall be imposed at the time the remote retail seller located within or outside of the
116 Commonwealth makes a remote retail sale to a consumer within the Commonwealth. It is the intent and
117 purpose of this subdivision that the remote retail seller be liable for the tax. It is further the intent and
118 purpose of this article to impose the tax once, and only once on all tobacco products, including cigars and
119 pipe tobacco sold in the Commonwealth.

120 Such tax shall be imposed on tobacco products (i) at the time of retail sale by a retail dealer or
121 distributor; (ii) at the time the distributor makes, manufactures, or fabricates tobacco products in the
122 Commonwealth for sale in the Commonwealth; or (iii) at the time the distributor ships or transports
123 tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose
124 of this article that the distributor who first possesses the tobacco product subject to this tax in the
125 Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article
126 to impose the tax once, and only once on all tobacco products for sale in the Commonwealth.

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

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

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