

VIRGINIA ACTS OF ASSEMBLY - 2025 SESSION

CHAPTER 142

An Act to amend and reenact §§ 3.2-4709, 58.1-609.2, and 58.1-1707 of the Code of Virginia and to repeal Article 3 (§§ 3.2-4738 through 3.2-4752) of Chapter 47 of Title 3.2 of the Code of Virginia, relating to dealers in agricultural produce.

[H 1837]

Approved March 19, 2025

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4709, 58.1-609.2, and 58.1-1707 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-4709. Definitions.

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

"Auction market," "livestock auction market," "livestock sales ring," "livestock auction," or "livestock auction ring" means a place or establishment operated for compensation or profit as a private or public market, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held for sale or where livestock is sold or offered for sale either privately or at public auction.

"Commission merchant" means any person; who: (i) operates an auction market; (ii) receives farm products for sale on commission or contracts with the producer for farm products sold on commission or for a fee; (iii) accepts in trust from the producer for the purpose of sale; (iv) sells or offers for sale on commission; (v) solicits consignments of any kind of farm products; or (vi) handles the account of or as an agent of the producer any kind of farm products. No person shall be deemed to be an agent of the producer unless a specific price has been agreed upon by both parties before shipment or delivery by the producer for resale.

"Commission merchant" ~~shall~~ *does* not include: (i) any cooperative corporation or association that is subject to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1; (ii) any association or organization of farmers, including produce exchanges, not incorporated under or subject to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, organized and maintained by farmers for mutual help in the marketing of their produce and not for profit; (iii) any person buying vegetables, viticulture, or horticultural farm products for the purpose of reselling these products in dried, canned, or other preserved form; (iv) the sale of farm produce at public auction by a licensed auctioneer, acting as the agent of another to whom such farm produce is consigned; (v) the sale by sheriffs and other officers and fiduciaries and court officials; (vi) seed sold at retail; or (vii) persons licensed pursuant to the provisions of ~~Article 3 (§ 3.2-4738 et seq.) of this chapter~~ *under the federal Perishable Agricultural Commodities Act (7 U.S.C. § 499a et seq.)*.

"Farm produce" or "farm products" means horticultural, viticulture, forestry, dairy, livestock, poultry, bee, and other products ordinarily produced on farms.

"Licensee" means any person who has been granted a license to operate, conduct, or carry on the business of a commission merchant.

§ 58.1-609.2. Agricultural exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.

2. Every agricultural commodity or kind of seafood sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption in the process of preparing, finishing, or manufacturing such agricultural or seafood commodity for the ultimate retail consumer trade, except when such agricultural or seafood commodity is actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping.

3. Livestock and livestock products, poultry and poultry products, and farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.

4. Machinery, tools, equipment, materials or repair parts therefor or replacement thereof; fuel or supplies; and fishing boats, marine engines installed thereon or outboard motors used thereon, and all replacement or repair parts in connection therewith; provided the same are sold to and purchased by watermen for use by them in extracting fish, bivalves or crustaceans from waters for commercial purposes.

5. Machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy or supplies, and cereal grains and other feed ingredients, including, but not limited to, drugs, vitamins, minerals, nonprotein nitrogen, and other supplements or additives, used directly in making feed for sale or resale. Making of feed shall include the mixing of liquid ingredients.

6. Machinery or tools and repair parts therefor or replacements thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product used for (i) removing timber or other forest products from the harvesting site, (ii) complying with environmental protection and safety requirements applicable to the harvesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.

7. ~~Agricultural produce, as defined in § 3.2-4738~~ *Fruits, vegetables*, and eggs, as described in § 3.2-5305, raised and sold by an individual at local farmers markets and roadside stands, when such individual's annual income from such sales does not exceed \$2,500.

8. The following property used directly in producing agricultural products for market in an indoor, closed, controlled-environment commercial agricultural facility:

a. Internal components or materials, whether or not they are affixed to real property, required (i) to create, support, and maintain the necessary growing environment for plants, including towers for growing plants; conveyances for moving such towers; and insulation, partitions, and cladding; (ii) for lighting systems; (iii) for heating, cooling, humidification, dehumidification, and air circulation systems; and (iv) for watering and water treatment systems;

b. External components, machinery, and equipment required (i) for heating, cooling, humidification, dehumidification, and air circulation systems; (ii) for utility upgrades and related distribution infrastructure; and (iii) for creating, supporting, and maintaining the necessary growing environment for plants; and

c. Structural components of (i) insulation, partitions, or cladding used in indoor vertical farming to create and maintain the necessary growing environment for plants or (ii) translucent or transparent elements, including windows, walls, and roofs, that allow sunlight in greenhouses to create and maintain the necessary growing environment for plants.

For purposes of this subdivision, "indoor, closed, controlled-environment commercial agricultural facility" ~~shall include~~ *includes* indoor vertical farming or a greenhouse, regardless of whether the greenhouse is affixed to real property and, "agricultural products" ~~shall include~~ *includes* any horticultural, floricultural, viticulture, or other farm crops. However, the exemption provided by this subdivision shall not apply to property used in producing cannabis or any derivative of cannabis.

§ 58.1-1707. Tax levied.

A. There is hereby levied and imposed upon every person in the Commonwealth engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in § 58.1-1708 an annual litter tax of \$20 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells ~~agricultural produce, as defined in § 3.2-4738, and~~ *fruits or vegetables* or an individual who sells eggs, as described in § 3.2-5305, in local farmers markets or at roadside stands, provided that his annual income from such sales does not exceed \$1,000; and that any container he provides to hold purchased items has been previously used.

B. In addition to the tax levied in subsection A, each person engaged in business as a manufacturer, wholesaler, distributor, or retailer of products enumerated in category 2, 4, or 5 of § 58.1-1708 shall pay an additional annual litter tax of \$30 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells ~~agricultural produce, as defined in § 3.2-4738, and~~ *fruits or vegetables* or an individual who sells eggs, as described in § 3.2-5305, in local farmers markets or at roadside stands, provided that his annual income from such sales does not exceed \$1,000; and that any container he provides to hold purchased items has been previously used.

C. For purposes of the tax levied in this section, a vending machine shall not be deemed a separate establishment. Any person engaged in the business of selling goods, wares, and merchandise through the use of coin-operated vending machines shall pay an annual litter tax only with respect to each establishment from which goods, wares, or merchandise are stored, kept, or assembled for purposes of supplying such vending machines.

2. That Article 3 (§§ 3.2-4738 through 3.2-4752) of Chapter 47 of Title 3.2 of the Code of Virginia is repealed.