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HOUSE BILL NO. 1387

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 10.1, consisting of sections numbered 58.1-1031 through 58.1-1040, and to amend and reenact § 59.1-200 of the Code of Virginia, relating to the sale of cigarettes produced for export; penalties.

Patrons—Clement, Albo, Blevins, Diamonstein, Hamilton, Katzen, Pollard, Rollison and Wardrup; Senators: Forbes, Lambert and Mims

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 58.1, a chapter numbered 10.1, consisting of sections numbered 58.1-1031 through 58.1-1040 and to amend and reenact § 59.1-200 of the Code of Virginia, as follows:

CHAPTER 10.1. CIGARETTE ENFORCEMENT.

§ 58.1-1031. Prohibitions.

It shall be unlawful for any person:

A. To sell or distribute in this Commonwealth, to acquire, hold, own, possess, or transport, for sale or distribution in this Commonwealth, or to import, or cause to be imported, into this Commonwealth for sale or distribution in this Commonwealth (i) any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording, or any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333, or does not comply with all federal trademark and copyright laws; (ii) any cigarettes imported into the United States on or after January 1, 2000, in violation of 26 U.S.C. § 5754 or any other federal law, or implementing federal regulations; (iii) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or (iv) any cigarettes for which there has not been submitted to the Secretary of the U. S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a.

B. To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice described in subdivision A (i) of this section, or (ii) any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333;

C. To affix any stamp required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title to the package of any cigarettes described in subsection A of this section or altered in violation of subsection B of this section.

§ 58.1-1032. Documentation.

On the first business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month, (i) a copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes, and the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U. S. Bureau of Alcohol, Tobacco and Firearms; (ii) a statement, signed by such person under the penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Virginia Freedom of Information Act (§ 2.1-340 et seq.), identifying the brand and brand styles of all such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale, and a separate statement signed by such person under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brand and brand styles of such cigarettes; and (iii) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with

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HB1387

60 *respect to such cigarettes and §§ 3.1-336.1 and 3.1-336.2 of the Code of Virginia, including a statement*
61 *indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the*
62 *meaning of § 3.1-336.1.*

63 *§ 58.1-1033. Criminal penalties.*

64 *Any person who commits any of the acts prohibited by § 58.1-1031, either knowingly or having*
65 *reason to know he is doing so, or who fails to comply with any of the requirements of § 58.1-1032,*
66 *shall be guilty of a Class 5 felony.*

67 *§ 58.1-1034. Administrative sanctions.*

68 *A. The Department may revoke or suspend the permit or permits of any dealer for a violation of this*
69 *chapter or any implementing rule promulgated by the Department as provided in § 58.1-1011.*

70 *B. The Department may impose a civil penalty in an amount not to exceed the greater of 500 percent*
71 *of the retail value of the cigarettes involved or \$5,000 upon finding a violation of this chapter and*
72 *assess tax due and interest on any product acquired, possessed, sold, or offered for sale in violation of*
73 *this chapter.*

74 *§ 58.1-1035. Seizure.*

75 *Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or*
76 *distributed in this Commonwealth in violation of this chapter shall be deemed contraband and shall be*
77 *subject to seizure, forfeiture and destruction by the Department of Alcoholic Beverage Control. Such*
78 *cigarettes shall be deemed contraband whether the violation of this chapter is knowing or otherwise.*

79 *§ 58.1-1036. Unfair trade practices.*

80 *A violation of § 58.1-1031 or § 58.1-1032 shall constitute a prohibited practice as provided in*
81 *§ 59.1-200, and, in addition to any remedies or penalties set forth in this chapter, shall be subject to*
82 *any remedies or penalties available for a violation of that section.*

83 *§ 58.1-1037. Unfair cigarette sales.*

84 *For the purposes of this chapter, cigarettes imported or reimported into the United States for sale or*
85 *distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly*
86 *similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United*
87 *States for sale or distribution in the United States shall be presumed to have been purchased outside of*
88 *the ordinary channels of trade.*

89 *§ 58.1-1038. General provisions.*

90 *A. For the purpose of enforcing this chapter, the Department may request or share information with*
91 *any state or local agency, federal agency or any agency of any other state or any local agency thereof.*

92 *B. Any person who acquires, holds, owns, possesses, transports in or imports into this*
93 *Commonwealth cigarettes which are subject to this chapter shall, with respect to such cigarettes,*
94 *maintain and keep all records required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title.*

95 *C. In addition to any other remedy provided by law, any person may bring an action for appropriate*
96 *injunctive or other equitable relief for a violation of this chapter, actual damages, if any, sustained by*
97 *reason of the violation, and, as determined by the court, interest on the damages from the date of the*
98 *complaint and taxable costs. If the trier of facts finds that the violation was willful, it may increase*
99 *damages to an amount not exceeding three times the actual damages sustained by reason of the*
100 *violation.*

101 *§ 58.1-1039. Definitions.*

102 *As used in this section.*

103 *A. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under*
104 *ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in*
105 *any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which,*
106 *because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely*
107 *to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any*
108 *substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or*
109 *its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette*
110 *described in clause (i) of this definition.*

111 *B. "Importer" means "importer" as that term is defined in 26 U.S.C. § 5702 (1).*

112 *C. "Manufacturer" means "manufacturer" as that term is defined in 26 U.S.C. § 5702 (d).*

113 *D. "Package" means "package" as that term is defined in 15 U.S.C. § 1332(4).*

114 *§ 58.1-1040. Applicability.*

115 *A. This chapter does not apply to (i) cigarettes allowed to be imported or brought into the United*
116 *States for personal use free of federal tax or (ii) cigarettes sold or intended to be sold as duty-free*
117 *merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. § 1555(b)*
118 *and any implementing regulations; provided, however, that this section shall apply to any such*
119 *cigarettes that are brought back into the customs territory for resale within the customs territory.*

120 *B. The penalties provided in this chapter are in addition to any other penalties imposed under other*
121 *law.*

122 § 59.1-200. Prohibited practices.
 123 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
 124 transaction are hereby declared unlawful:
 125 1. Misrepresenting goods or services as those of another;
 126 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
 127 3. Misrepresenting the affiliation, connection or association of the supplier, or of the goods or
 128 services, with another;
 129 4. Misrepresenting geographic origin in connection with goods or services;
 130 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
 131 benefits;
 132 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
 133 7. Advertising or offering for sale goods which are used, secondhand, repossessed, defective,
 134 blemished, deteriorated, or reconditioned, or which are "seconds," irregulars, imperfects, or "not first
 135 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
 136 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
 137 irregulars, imperfects or "not first class";
 138 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
 139 at the price or upon the terms advertised.
 140 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
 141 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
 142 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph
 143 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
 144 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
 145 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
 146 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;
 147 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts
 148 of price reductions;
 149 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
 150 installed;
 151 11. Misrepresenting by the use of any written or documentary material which appears to be an
 152 invoice or bill for merchandise or services previously ordered;
 153 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
 154 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
 155 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
 156 manufacturing the goods or services advertised or offered for sale;
 157 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
 158 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
 159 or penalties which are void or unenforceable under any otherwise applicable laws of this
 160 Commonwealth, or under federal statutes or regulations;
 161 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
 162 with a consumer transaction;
 163 15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of
 164 certain animals by pet dealers which is described in such sections, is a violation of this chapter;
 165 16. Failing to disclose all conditions, charges, or fees relating to:
 166 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
 167 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
 168 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
 169 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
 170 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
 171 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
 172 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
 173 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
 174 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
 175 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
 176 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
 177 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
 178 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
 179 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
 180 § 46.2-100;
 181 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
 182 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the

183 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
184 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
185 the agreement;

186 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
187 of five dollars (i) on an account maintained by the supplier and (ii) resulting from such consumer's
188 overpayment on such account. Suppliers shall give consumers written notice of such credit balances
189 within sixty days of receiving overpayments. If the credit balance information is incorporated into
190 statements of account furnished consumers by suppliers within such sixty-day period, no separate or
191 additional notice is required;

192 17. If a supplier enters into a written agreement with a consumer to resolve a dispute which arises in
193 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
194 agreement;

195 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
196 title;

197 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
198 seq.) of this title;

199 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
200 seq.) of this title;

201 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
202 (§ 59.1-207.17 et seq.) of this title;

203 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

204 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
205 (§ 59.1-424 et seq.) of this title;

206 24. Violating any provision of § 54.1-1505;

207 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
208 17.6 (§ 59.1-207.34 et seq.) of this title;

209 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

210 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
211 title;

212 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
213 this title;

214 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
215 seq.) of this title;

216 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
217 seq.) of this title;

218 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
219 title;

220 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1; and

221 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1.

222 34. *Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1.*

223 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
224 lease solely by reason of the failure of such contract or lease to comply with any other law of the
225 Commonwealth or any federal statute or regulation, to the extent such other law, statute or regulation
226 provides that a violation of such law, statute or regulation shall not invalidate or make unenforceable
227 such contract or lease.