

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 821

An Act to amend and reenact §§ 58.1-1009, 58.1-1033, and 58.1-1034 of the Code of Virginia, relating to sale of cigarettes produced for export.

[H 1221]

Approved April 8, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1009, 58.1-1033, and 58.1-1034 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1009. Preparation, design and sale of stamps; unlawful sale of stamps a felony.

The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. When wholesalers have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow on such sales of revenue stamps a discount of two and one-half cents per carton. As used herein "carton" shall mean ten packs of cigarettes, each containing twenty cigarettes. All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. *The Department shall maintain for not less than three years information identifying which wholesale dealer or retail dealer affixed the revenue stamp to each package of cigarettes.*

§ 58.1-1033. Prohibited acts.

It shall be unlawful for any person to:

1. Sell or distribute in the Commonwealth, acquire, hold, own, possess, or transport, for sale or distribution in the Commonwealth, or import, or cause to be imported, into the Commonwealth for sale or distribution in the 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; (ii) any cigarettes the package of which does not comply with (a) 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 (b) all federal trademark and copyright laws; (iii) any cigarettes imported into the United States in violation of 26 U.S.C. § 5754 or 19 U.S.C. § 1681-1681b, or any other federal law or regulations; (iv) 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 (v) 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;

2. 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 clause (i) of subdivision 1 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; or

3. Affix any stamp required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title to the package of any cigarettes described in subdivision 1 of this section or altered in violation of subdivision 2 of this section.

§ 58.1-1034. Records to be kept; filing with Department.

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

B. Between the first and tenth 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.~~ 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 shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; *however, if such licensed person has already provided to the Department the identical information required by this clause as part of its monthly reporting required by Chapter 10 (§ 58.1-1000 et seq.) of this title, then such monthly reporting shall be deemed to have also been made simultaneously under the provisions of this clause, and duplicate copies need not be provided to the Department;* 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 respect to such cigarettes and §§ 3.1-336.1 and 3.1-336.2 of the Code of Virginia, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of § 3.1-336.1.