

022790468

## HOUSE BILL NO. 1221

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Marye  
on February 21, 2002)

(Patron Prior to Substitute—Delegate Albo)

*A BILL to amend and reenact §§ 58.1-1009, 58.1-1033, and 58.1-1034 of the Code of Virginia and to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 10.01, consisting of sections numbered 58.1-1023 through 58.1-1028, relating to sale of cigarettes produced.*

**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, and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 10.01, consisting of sections numbered 58.1-1023 through 58.1-1028 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.

60 B. Between the first and tenth business day of each month, each person licensed to affix the state tax  
61 stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to  
62 which such person has affixed the tax stamp in the preceding month, (i) a copy of the permit issued  
63 pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into  
64 the United States allowing such person to import such cigarettes, and the customs form containing, with  
65 respect to such cigarettes, the internal revenue tax information required by the ~~U. S.~~ U.S. Bureau of  
66 Alcohol, Tobacco and Firearms; (ii) a statement, signed by such person under the penalty of perjury,  
67 which shall be treated as confidential by the Department and shall be exempt from disclosure under the  
68 Virginia Freedom of Information Act (§ 2.2-3700 et seq.), identifying the brand and brand styles of all  
69 such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and  
70 the person or persons, if any, to whom such cigarettes have been conveyed for resale; *however, if such*  
71 *licensed person has already provided to the Department the identical information required by this clause*  
72 *as part of its monthly reporting required by Chapter 10 (§ 58.1-1000 et seq.) of this title, then such*  
73 *monthly reporting shall be deemed to have also been made simultaneously under the provisions of this*  
74 *clause, and duplicate copies need not be provided to the Department; and (iii) a statement, signed by an*  
75 *officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or*  
76 *importer has complied with the package health warning and ingredient reporting requirements of the*  
77 *Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with respect to such*  
78 *cigarettes and §§ 3.1-336.1 and 3.1-336.2 of the Code of Virginia, including a statement indicating*  
79 *whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of*  
80 *§ 3.1-336.1.*

81 CHAPTER 10.01.  
82 CIGARETTE TAX ACT.

83 § 58.1-1023. Cigarette tax; definitions.

84 As used in this section:

85 "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or  
86 shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where  
87 such roll has a wrapper or cover made of paper or any other material. The term shall not be construed  
88 to include cigars, cheroots, stogies or little cigars.

89 "Manufacturer" means any person who manufactures or produces cigarettes within the  
90 Commonwealth.

91 § 58.1-1024. Administration and collection of tax.

92 The Department shall administer the provisions of this chapter, and it shall collect, supervise, and  
93 enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.  
94 The Department shall promulgate regulations for its administration, enforcement of the provisions of this  
95 chapter, and collection of the taxes, fees, and penalties imposed by this chapter.

96 § 58.1-1025. Rate of tax.

97 There shall be imposed a tax at the rate of .5 mills for each cigarette manufactured or produced in  
98 the Commonwealth.

99 § 58.1-1026. Tax returns.

100 Every manufacturer, on or before the twentieth day of each calendar month, shall file with the  
101 Department, on a form prescribed by it, a return under the penalties of perjury, stating the number of  
102 cigarettes manufactured or produced in the Commonwealth during the preceding calendar month. The  
103 return shall contain or be accompanied by such further information as the Department shall require.  
104 The manufacturer, at the time of filing the return, shall pay to the Department the excise tax imposed  
105 under § 58.1-1025.

106 § 58.1-1027. Returns, examination; determination of tax; penalties; failure to file; limitation on  
107 assessment of penalty.

108 If the Department determines that the correct amount of tax is greater or less than that shown in the  
109 return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that  
110 which should have been paid on the basis of the tax so recomputed, the excess may be credited against  
111 a subsequent tax or shall be refunded if requested by the taxpayer.

112 If the amount paid is less than the amount that should have been paid, the deficiency, together with  
113 interest thereon at the rate provided in § 58.1-15, shall become due and payable.

114 If any part of the deficiency is due to negligent or intentional disregard of this chapter or of  
115 regulations of the Department, but without intent to defraud, there shall be added, as a penalty, ten  
116 percent of the total amount of the deficiency in the tax, and interest shall be collected at the rate of one  
117 percent per month on the amount of such deficiency in the tax from the time it was due.

118 If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added,  
119 as a penalty, 100 percent of such deficiency and, in such a case, the whole amount of tax unpaid,  
120 together with the penalty, shall become due and payable, and an additional one percent per month on  
121 the tax shall be added from the date such tax was due until paid.

122 *If any person fails or refuses to file a return or pay the tax required to be paid under this chapter,*  
123 *the Department shall proceed to determine the tax due from such information as the Department can*  
124 *obtain, shall assess the tax so determined against such person, and shall notify him of the amount*  
125 *thereof. Such tax shall become due and payable, together with a penalty of twenty-five percent of such*  
126 *tax, or five dollars per day for each day after the date set for the filing of the return, whichever is*  
127 *greater.*

128 *Whenever notice is required under the provisions of this chapter, such notice shall be given either in*  
129 *person or by registered mail addressed to the last known address of the taxpayer.*

130 *No deficiency, interest or penalty shall be assessed for any month after the expiration of three years*  
131 *from the date set for the filing of the return for such month, except in cases of fraud, or where no*  
132 *return has been filed for the period covered by the deficiency.*

133 *§ 58.1-1028. Revenues; disposition.*

134 *The proceeds derived from payment of taxes, fees and penalties provided for under this chapter shall*  
135 *be paid into the state treasury. The Comptroller shall credit such taxes as special revenues to the*  
136 *"School Construction Grants Program" for expenditure solely for public education purposes. No portion*  
137 *of the special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal*  
138 *year, and all interest or other earnings accrued as a result of the existence of this special fund in the*  
139 *state treasury shall inure to the benefit and credit of the School Construction Grants Program. However,*  
140 *the cost of collecting the taxes levied hereby shall be paid out of such special fund.*

141 **2. That the provisions of Chapter 10.01 of Title 58.1, consisting of sections 58.1-1023 through**  
142 **58.1-1028 shall expire on July 1, 2004.**