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HOUSE BILL NO. 909

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 6, 2002)

(Patron Prior to Substitute—Delegate Dudley)

A BILL to amend and reenact § 58.1-1009 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-3.2 and 58.1-1008.1, relating to tobacco sales and tax information; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1009 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-3.2 and 58.1-1008.1 as follows:

§ 58.1-3.2. Tax Commissioner's authority to request and share information.

Notwithstanding the provisions of § 58.1-3, the Tax Commissioner is authorized to disclose any information collected by him, or reported or provided to him, on the sales or purchases of cigarettes or other tobacco products, and tax information relating to such sales or purchases, to any federal, state, or local agency, including any agency of another state or local agency thereof, or any national or regional association of federal, state, or local agencies. Such tax information shall include any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income, business or tax returns of any person, firm, or corporation.

Further, the Tax Commissioner is authorized to disclose information collected by him, or reported or provided to him, on the sales or purchases of cigarettes or other tobacco products to any tobacco product manufacturer required to establish a qualified escrow fund under § 3.1-336.2. Such information provided to any tobacco product manufacturer shall be limited to brands or products of that manufacturer only.

§ 58.1-1008.1. Monthly reports of tobacco product manufacturers.

Every manufacturer producing cigarettes in or shipping cigarettes into or within the Commonwealth shall file a report with the Department between the first and tenth day of each month identifying all purchasers of cigarettes by name and address with the quantities and brands of cigarettes purchased during the preceding month, and shall provide any other information the Department deems appropriate for the administration of this title or Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1. The Department shall have the power to enter upon the premises of any such manufacturer during its regular business hours to examine or cause to be examined, by any agent or representative designated by the Department for that purpose, any books, papers, records, invoices, or memoranda, etc., relating to (i) the information required in such report, or (ii) the manufacturer's compliance with this section.

Any manufacturer subject to the provisions of this section who fails or refuses to file the report required by this section, or who upon request by a duly authorized agent or representative of the Department fails or refuses to allow an audit or inspection of records as provided herein, is guilty of a Class 2 misdemeanor. In addition, the Department may impose a civil penalty not to exceed $ 5,000 against any manufacturer subject to the provisions of this section for such failure or refusal. Each failure or refusal shall constitute a separate violation.

For the purposes of this section:

"Manufacturer" means tobacco product manufacturer, as that term is defined in § 3.1-336.1.

"Purchasers" means any person or persons purchasing or receiving cigarettes for resale, including wholesalers and retailers, or any other person or persons purchasing cigarettes directly from a manufacturer within the Commonwealth.

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

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. *Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the cigarettes being handled or stamped, whether such stamps are 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. *In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates this section.*

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 to 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.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.