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SENATE BILL NO. 574

Offered January 15, 2002

A BILL to amend and reenact §§ 58.1-1003 and 58.1-1033 of the Code of Virginia, relating to the affixing of stamps on cigarettes.

Patrons—Ruff; Delegates: Armstrong, Byron, Councill, Dudley, Hurt, Marshall, D.W. and Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1003 and 58.1-1033 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1003. How paid; affixing of stamps; records of dealers.

A. The taxes imposed by this chapter shall be paid by affixing stamps equaling the amount of the tax in the manner and at the time herein set forth. The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this Commonwealth shall, within one hour after receipt of any unstamped cigarettes, begin affixing to the same the requisite denominations and amount of stamp or stamps that represent the proper tax levied by this chapter. Stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped cigarettes have been stamped; however, any wholesale dealer engaged in interstate business shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Interstate stock shall be kept entirely separate from stamped stock in such a manner as to prevent the commingling of the interstate stock with the stamped stock.

B. A wholesale or retail dealer shall not affix, or cause to be affixed, stamps to a package, bag, box or can of cigarettes if (i) the tobacco product manufacturer, as defined in § 3.1-336.1, of such cigarettes has not provided such wholesale or retail dealer with a copy of the certification described in subsection C of § 3.1-336.2 (with or without confidential information being deleted); or (ii) the Attorney General has provided written notice to such dealer that such tobacco product manufacturer (a) is in violation of the provisions of § 3.1-336.2 or (b) has filed a false certification under subsection C of § 3.1-336.2, and such dealer has not been provided written notice by the Attorney General that the violation in (a) or (b) has ceased. The penalties provided in § 58.1-1013 shall apply mutatis mutandis to any person in violation of this prohibition. A wholesale or retail dealer who affixes stamps to a package, bag, box or can of cigarettes in reliance on the certification described in subsection C of § 3.1-336.2, which certification is subsequently found by the Attorney General to be false, has lawfully affixed such stamps and shall not be subject to any of the penalties of this chapter.

BC. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. Wholesale and retail dealers shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes.

CD. Any wholesaler or retailer who fails or refuses to comply with any of the above provisions shall be guilty of a Class 1 misdemeanor.

§ 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 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

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59 required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a;

60 2. *Sell or distribute in the Commonwealth, acquire, hold, own, possess, or transport for sale or*
61 *distribution in the Commonwealth, or import, or cause to be imported, into the Commonwealth for sale*
62 *or distribution in the Commonwealth any cigarettes for which the tobacco product manufacturer, as*
63 *defined in § 3.1-336.1, has not complied with the provisions of § 3.1-336.1 or § 3.1-336.2. Cigarettes*
64 *stamped in reliance on the certification of subsection C of § 3.1-336.2 as described in subsection B of*
65 *§ 58.1-1003, which certification is subsequently found by the Attorney General to be false, for purposes*
66 *of this chapter, shall be considered cigarettes of a tobacco product manufacturer in compliance with the*
67 *provisions of §§ 3.1-336.1 and 3.1-336.2, regardless of whether such manufacturer has in fact complied*
68 *with the provisions of such sections.*

69 23. Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to
70 remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice described in clause (i) of
71 subdivision 1 or (ii) any health warning that is not specified in, or does not conform with the
72 requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333; or

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

76 2. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by
77 any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or
78 invalidate any other provision of this act, but shall be confined in its operation to the clause,
79 sentence, paragraph, subdivision, section or part of this act directly involved in the controversy in
80 which the judgment shall have been rendered.

81 4. That an emergency exists and this act is in force from its passage. If the date that this act is
82 signed into law by the Governor is subsequent to April 30, 2002, then the certification required
83 under subsection C of § 3.1-336.2, for the year in which this act becomes law, shall be delivered to
84 affected wholesale and retail dealers no later than sixty days after such date.