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SENATE BILL NO. 956

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 17, 2003)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact § 58.1-1015 of the Code of Virginia, and to amend the Code of Virginia by adding an article numbered 10 in Chapter 6 of Title 18.2, consisting of sections numbered 18.2-246.6 through 18.2-246.15, relating to sales of cigarettes.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1015 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding an article numbered 10 in Chapter 6 of Title 18.2, consisting of sections numbered 18.2-246.6 through 18.2-246.15, as follows:

Article 10.

Cigarette Delivery Sale Requirements.

§ 18.2-246.6. Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the Virginia Alcoholic Beverage Control Board.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § 58.1-1011 or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Person" means the same as that term is defined in § 1-13.19.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ 18.2-246.7. Requirements for delivery sales.

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the Commonwealth.

B. Each person accepting a purchase order for a delivery sale shall comply with:

1. The age verification requirements set forth in § 18.2-246.8;

2. The disclosure requirements set forth in § 18.2-246.9;

3. The shipping requirements set forth in § 18.2-246.10;

4. The registration and reporting requirements set forth in § 18.2-246.11;

5. The tax collection requirements set forth in § 18.2-246.12; and

6. All other laws of the Commonwealth generally applicable to sales of cigarettes that occur entirely within the Commonwealth, including, but not limited to, those laws imposing: (i) excise taxes, (ii) sales taxes and (iii) license and revenue-stamping requirements.

§ 18.2-246.8. Age verification requirements.

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person:

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age, and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least 18 years of age. Such statement shall also confirm (a) that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that the sale of cigarettes to

60 individuals under the legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by
61 individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

62 2. Makes a good faith effort to verify the information contained in the certification provided by the
63 prospective consumer pursuant to subsection A against a commercially available database of valid,
64 government-issued identification that contains the date of birth or age of the individual placing the
65 order, or obtains a photocopy or other image of the valid, government-issued identification stating the
66 date of birth or age of the individual placing the order;

67 3. Provides to the prospective consumer, via e-mail or other means, a notice that meets the
68 requirements of § 18.2-246.9; and

69 4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card
70 that has been issued in such consumer's name or by a check drawn on the consumer's account.

71 B. Persons accepting purchase orders made via the Internet for delivery sales may request that
72 prospective consumers provide their e-mail addresses.

73 § 18.2-246.9. Disclosure requirements.

74 The notice required under subdivision A 3 of § 18.2-246.8 shall include:

75 1. A prominent and clearly legible statement that cigarette sales to consumers below the legal
76 minimum purchase age are illegal;

77 2. A prominent and clearly legible statement that consists of one of the warnings set forth in section
78 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) rotated on a
79 quarterly basis;

80 3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers
81 who provide verifiable proof of age in accordance with § 18.2-246.8; and

82 4. A prominent and clearly legible statement that cigarette sales are subject to tax under
83 § 58.1-1001, and an explanation of how such tax has been, or is to be, paid with respect to such
84 delivery sale.

85 § 18.2-246.10. Shipping requirements.

86 Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

87 1. Shall include as part of the shipping documents a clear and conspicuous statement providing as
88 follows: "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18, and Requires the
89 Payment of all Applicable Taxes";

90 2. Shall use a method of mailing, shipping, or delivery that obligates the delivery service or any
91 party making delivery to require (i) the consumer placing the purchase order for the delivery sale, or an
92 adult of legal minimum purchase age, to sign to accept delivery of the shipping container, and (ii)
93 proof, in the form of a valid, government-issued identification bearing a photograph of the individual
94 who signs to accept delivery of the shipping container, demonstrating that he is either the addressee
95 who is of legal minimum purchase age or another adult of legal minimum purchase age. However, proof
96 of the legal minimum purchase age shall be required only if such individual appears to be under 27
97 years of age; and

98 3. Shall provide to the delivery service retained for such delivery sale evidence of full compliance
99 with § 18.2-246.12.

100 § 18.2-246.11. Registration and reporting requirements.

101 A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in
102 connection with any such delivery sales, every person shall file with the Board a statement setting forth
103 such person's name, trade name, and the address of such person's principal place of business and any
104 other place of business.

105 B. Not later than the tenth day of each calendar month, each person that has made a delivery sale
106 or mailed, shipped, or otherwise delivered cigarettes in connection with any such delivery sale during
107 the previous calendar month shall file with the Board a report in the format prescribed by the Board,
108 which may include an electronic format, that provides for each and every such delivery sale:

109 1. The name and address of the consumer to whom such delivery sale was made;

110 2. The brand or brands of the cigarettes that were sold in such delivery sale; and

111 3. The quantity of cigarettes that were sold in such delivery sale.

112 C. Any person who satisfies the requirements of § 376 of Title 15 of the United States Code shall be
113 deemed to satisfy the requirements of this section.

114 § 18.2-246.12. Collection of taxes.

115 Each person accepting a purchase order for a delivery sale shall collect and remit to the Board all
116 cigarette taxes imposed by the Commonwealth with respect to such delivery sale, except that such
117 collection and remission shall not be required to the extent such person has obtained proof (in the form
118 of the presence of applicable revenue stamps or otherwise) that such taxes already have been paid to
119 the Commonwealth. In the event the Board finds that any tax imposed by the Commonwealth and
120 administered by the Department of Taxation has not been collected and remitted, the Board shall
121 provide the Department of Taxation with a notification of such sale which shall include:

1. The name and address of the consumer to whom such sale was made;
2. The name and address of the seller of the cigarettes;
3. The brand or brands of the cigarettes that were sold in such sale; and
4. The quantity of cigarettes that were sold in such sale.

§ 18.2-246.13. Penalties.

A. Except as specifically provided in § 18.2-246.14, a first violation of any provision of this article shall be punishable by a civil penalty of no more than \$1,000. A second or subsequent violation of any provision of this article shall be punishable by a civil penalty of no more than \$10,000.

B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of § 18.2-246.8 shall be subject to a civil penalty of no more than \$5,000 for each such offense.

C. Any person failing to collect or remit to the Board or the Department of Taxation any tax required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty, a civil penalty of no more than five times the retail value of the cigarettes involved.

D. Any civil penalty collected under this article shall be paid to the general fund.

E. Any cigarettes sold or attempted to be sold in a delivery sale in violation of this article shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

§ 18.2-246.14. Counterfeit Cigarettes.

A. It shall be unlawful to sell or possess counterfeit cigarettes. Such cigarettes shall be subject to seizure, forfeiture and destruction by the Board or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with sale or possession of counterfeit cigarettes in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

B. Any person who knowingly violates subsection A with a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than \$1,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes, be punished by a civil penalty of no more than \$5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

C. Any person who knowingly violates subsection A with a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than \$2,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes, be punished by a civil penalty of no more than \$50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

For purposes of this section, counterfeit cigarettes shall include but not be limited to cigarettes that (i) have false manufacturing labels, (ii) are not manufactured by the manufacturer indicated on the container, or (iii) have affixed to the container a false tax stamp.

§ 18.2-246.15. Enforcement.

The Attorney General is authorized to enforce the provisions of this article. The Attorney General may bring an action in the appropriate court in the Commonwealth to prevent or restrain violations of this article by any person, or any person controlling such person.

§ 58.1-1015. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps.

A. Whoever removes or otherwise prepares any Virginia revenue stamp with intent to use, or cause the same to be used, after it has already been used, or buys, sells, offers for sale, or gives away any such washed or removed or restored stamps to any person for using or who used the same, or has in his possession any washed or restored or removed or altered stamp ~~which~~ *that* has been removed from the article to which it has been previously affixed, or whoever for the purpose of indicating the payment of any tax hereunder reuses any stamp which has heretofore been used for the purpose of paying any tax provided in this article, or whoever manufactures, buys, sells, offers for sale, or has in his possession any reproduction or counterfeit of the Virginia revenue stamps provided for in this article, or whoever sells any Virginia revenue stamps not affixed to taxable cigarettes shall be ~~guilty of a Class 5 felony~~ subject to the penalty provided for in this section.

B. It shall be unlawful to sell or possess cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps. Such cigarettes and stamps shall be subject to seizure, forfeiture and destruction by the Department or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with the sale or possession of cigarettes that are affixed with a reproduction or counterfeit of Virginia revenue stamps in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

183 C. Any person who knowingly violates subsection A with a total quantity of less than 40 revenue
184 stamps shall be punished by a civil penalty of no more than \$1,000. Any person who knowingly violates
185 subsection B shall, for a second or subsequent offense involving a total quantity of less than 40 revenue
186 stamps, be punished by a civil penalty of no more than \$5,000 and, if applicable, the revocation by the
187 Department of Taxation of his wholesale dealer license.

188 D. Any person who knowingly violates subsection B with a total quantity of 40 or more revenue
189 stamps shall be punished by a civil penalty of no more than \$2,000. Any person who knowingly violates
190 subsection B shall, for a second or subsequent offense involving a total quantity of 40 or more revenue
191 stamps, be punished by a civil penalty of no more than \$50,000 and, if applicable, the revocation by the
192 Department of Taxation of his wholesale dealer license.

193 The Attorney General is authorized to enforce the provisions of this section.

194 2. That the provisions of this act shall not become effective unless an appropriation of general
195 funds effectuating the purposes of this act is included in the 2003 Appropriation Act, passed
196 during the 2003 Session of the General Assembly and signed into law by the Governor.