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SENATE BILL NO. 956

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 2, 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 4 in Chapter 10 of Title 58.1, consisting of sections numbered 58.1-1022.1 through 58.1-1022.9, 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 4 in Chapter 10 of Title 58.1, consisting of sections numbered 58.1-1022.1 through 58.1-1022.9, as follows:

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

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.

Notwithstanding any other provision of law, the sale or possession of cigarettes by any person, including a manufacturer, wholesale dealer, or retail dealer that are (i) affixed with a reproduction or counterfeit of Virginia revenue stamps or (ii) counterfeit cigarettes shall result in the seizure of such cigarettes, stamps, and related machinery by the Department or any law-enforcement officer of the Commonwealth and shall be punishable as follows:

1. A first violation with a total quantity of less than 2 cartons of cigarettes or less than 40 tax stamps shall be punishable by a fine of \$1,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both.

2. A subsequent violation with a total quantity of less than 2 cartons of cigarettes or less than 40 tax stamps shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both the fine and the imprisonment, and shall also result in the revocation by the Department of the manufacturer or wholesale dealer license.

3. A first violation with a total quantity of 2 or more cartons of cigarettes or 40 or more tax stamps shall be punishable by a fine of \$2,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both.

4. A subsequent violation with a total quantity of 2 or more cartons of cigarettes or 40 or more tax stamps shall be punishable by a fine of \$50,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both, and shall also result in the revocation by the Department of the manufacturer or wholesale dealer license.

For purposes of this section, counterfeit cigarettes include cigarettes that have false manufacturing labels or are affixed without stamps or a combination thereof. Any counterfeit cigarette seized shall be destroyed.

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

Article 4.

Delivery Sale Requirements.

§ 58.1-1022.1. Definitions.

For purposes of this article:

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

"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 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 shall be a delivery sale regardless of whether the seller is located within the Commonwealth. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined

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60 in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a
61 common carrier, to a consumer performed by the owner or any agent or employee of a retailer
62 authorized to sell such cigarettes shall not be a delivery sale.

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

65 "Department" means the Department of Taxation.

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

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

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

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

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

74 § 58.1-1022.2. Requirements for delivery sales.

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

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

78 1. The age verification requirements set forth in § 58.1-1022.3;

79 2. The disclosure requirements set forth in § 58.1-1022.4;

80 3. The shipping requirements set forth in § 58.1-1022.5;

81 4. The registration and reporting requirements set forth in § 58.1-1022.6;

82 5. The tax collection requirements set forth in § 58.1-1022.7; and

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

86 § 58.1-1022.3. Age verification requirements.

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

89 1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that
90 the consumer is at least the legal minimum purchase age, and (ii) a statement signed by the prospective
91 consumer in writing that certifies the prospective consumer's address and that the consumer is at least
92 18 years of age. Such statement shall also confirm (a) that the prospective consumer understands that
93 signing another person's name to such certification is illegal, (b) that the sale of cigarettes to
94 individuals under the legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by
95 individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

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

100 3. Provides to the prospective consumer, via e-mail or other means, a notice that meets the
101 requirements of § 58.1-1022.4; and

102 4. In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives
103 payment for the delivery sale from the prospective consumer by a credit or debit card that has been
104 issued in such consumer's name or by check.

105 B. Persons accepting purchase orders for delivery sales may request that prospective consumers
106 provide their e-mail addresses.

107 § 58.1-1022.4. Disclosure requirements.

108 The notice required under subdivision A 3 of § 58.1-1022.3 shall include:

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

111 2. A prominent and clearly legible statement that consists of one of the warnings set forth in section
112 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) rotated on a
113 quarterly basis;

114 3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers
115 who provide verifiable proof of age in accordance with § 58.1-1022.3; and

116 4. A prominent and clearly legible statement that cigarette sales are subject to tax under
117 § 58.1-1001, and an explanation of how such tax has been, or is to be, paid with respect to such
118 delivery sale.

119 § 58.1-1022.5. Shipping requirements.

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

121 1. Shall include as part of the shipping documents a clear and conspicuous statement providing as

follows: "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

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

3. Shall provide to the delivery service retained for such delivery sale evidence of full compliance with § 58.1-1022.7.

B. If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this article applicable to a delivery service and shall be in violation of the provisions of this article if he fails to comply with any such requirement.

§ 58.1-1022.6. Registration and reporting requirements.

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

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

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

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

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

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

§ 58.1-1022.7. Collection of taxes.

Each person accepting a purchase order for a delivery sale shall collect and remit to the Department all cigarette taxes imposed by the Commonwealth with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the Commonwealth.

§ 58.1-1022.8. Penalties.

A. Except as otherwise provided in this section, a first violation of any provision of this article shall be punishable by a fine of \$1,000 or 5 times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of this article shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater.

B. Any person who knowingly violates any provision of this article, or who knowingly and falsely submits a certification under subdivision A 1 of § 58.1-1022.3 in another person's name, shall, for each such offense, be fined \$10,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than 5 years, or both.

C. Any person failing to collect or remit to the Department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of 5 times the retail value of the cigarettes involved.

D. Forfeiture.

1. Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of this article shall be forfeited to the Commonwealth and destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the Commonwealth, violates any of the requirements of this article shall be forfeited to the Commonwealth.

§ 58.1-1022.9. Enforcement.

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.

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

3. That the provisions of this act may result in a net increase in periods of imprisonment or

183 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is
184 _____ for periods of imprisonment in state adult correctional facilities and is
185 _____ for periods of commitment to the custody of the Department of Juvenile Justice.