VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 846

An Act to amend and reenact § 3.2-4207 of the Code of Virginia, relating to the Master Settlement Agreement; regulation of cigarette manufacturers.

[S 1059]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-4207 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-4207. Prohibition against stamping or sale or import of cigarettes not in the Directory.

A. It shall be unlawful for any person (i) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the Directory, or (ii) to sell, offer or possess for sale in the Commonwealth, ship or otherwise distribute into or within the Commonwealth, or import for personal consumption into the Commonwealth, cigarettes of a tobacco product manufacturer or brand family not included in the Directory. For purposes of this article a person shall be deemed to have received notice that cigarettes of a tobacco product manufacturer or brand family are not included in the Directory at the time the Attorney General's website fails to list any such cigarettes in the Directory or at the time any such cigarettes are removed from the Directory. A person purchasing cigarettes for resale shall not be in violation of this section (~~i~~ *a*) if at the time of such purchase the manufacturer and brand families of the cigarettes are included in the Directory and the cigarettes are otherwise lawfully stamped and sold within ~~14~~ *45* days of the date such manufacturer and brand families were removed from the Directory or (~~ii~~ *b*) if, in the case of a retailer, the cigarettes are sold or delivered to consumers within ~~14~~ *45* days after receipt of delivery of such cigarettes from a wholesaler, which cigarettes otherwise have been lawfully purchased from the same wholesaler. *A tobacco product manufacturer that is otherwise in compliance with the requirements of this chapter may, for reasons satisfactory to the Attorney General, request removal of itself, or cigarettes in a brand family that it manufactures or has manufactured, from the Directory. A person purchasing cigarettes for resale shall not be in violation of this section if (1) at the time of such purchase, the manufacturer and brand families of the cigarettes are included in the Directory and the cigarettes are otherwise lawfully stamped and sold within 60 days of the date such cigarettes were removed from the Directory or (2) in the case of a retailer, the cigarettes are sold or delivered to consumers within 60 days after receipt of delivery of such cigarettes from a wholesaler and the cigarettes have been lawfully purchased from the same wholesaler. The updates to the Directory required by subsection B of § 3.2-4206 shall contain a notation indicating such voluntary removal. For purposes of this subsection, "reasons satisfactory to the Attorney General" shall include cessation of the business operations of the tobacco products manufacturer and voluntary discontinuance of a product line or brand family.*

B. Any manufacturer, wholesaler or retail dealer selling cigarettes for resale of a manufacturer or brand family that has been removed from the Directory shall notify the purchaser of such cigarettes of that fact at the time of delivery of such cigarettes. Unless otherwise provided by contract or purchase agreement, a purchaser shall ~~be entitled to~~ *receive* a refund from ~~the~~ *such* manufacturer, wholesaler or retail dealer from whom the cigarettes were purchased of the purchase price of any cigarettes that are the product of a manufacturer or brand family removed from the Directory. *Any failure of such manufacturer, wholesaler or retail dealer to provide the purchaser with the refund required under this subsection shall (i) create a cause of action against such manufacturer, wholesaler or retail dealer in favor of the purchaser and (ii) subject such manufacturer, wholesaler or retail dealer to a civil penalty of $500 for each violation, which shall be assessed by the Commissioner and payable to the Literary Fund.*

C. The Commissioner shall, by regulation or guidelines, provide for the refund of the purchase price of tax stamps that have been lawfully affixed to cigarettes that may not be sold pursuant to the provisions of this section.