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## SENATE BILL NO. 1267

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 3.2-4212 and 58.1-1017 of the Code of Virginia, relating to contraband and unstamped cigarettes; penalties.*

Patron—Martin

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-4212 and 58.1-1017 of the Code of Virginia are amended and reenacted as follows:**

§ 3.2-4212. Penalties and other remedies.

A. In addition to any other civil or criminal penalty or remedy provided by law, upon a determination that any person has violated § 3.2-4207 or any regulation adopted pursuant thereto, the Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.2-4207 shall constitute a separate violation. Upon a determination of a violation of § 3.2-4207 or any regulations adopted pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth, or imported for personal consumption in the Commonwealth, in violation of § 3.2-4207, shall be deemed contraband and may not be sold or offered for sale unless such cigarettes are listed in the Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the procedures contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so confiscated and forfeited shall be destroyed and not resold.

C. The Attorney General may seek an injunction to restrain a threatened or actual violation of § 3.2-4207, subsection A of § 3.2-4209, subsection B of § 3.2-4209, or subsection C of § 3.2-4209 by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action and reasonable attorneys' fees.

D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the Commonwealth in violation of § 3.2-4207. A violation of this section involving less than 3,000 500 packages of cigarettes is a Class 1 misdemeanor. A violation of this section involving 3,000 500 or more packages of cigarettes is a Class 1 misdemeanor, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of 90 days.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.

A. Any person, except as otherwise provided by law, who sells, purchases, transports, receives, or possesses unstamped cigarettes shall be required to pay any tax owed pursuant to this chapter. In addition, such person shall be required to pay a civil penalty of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month period; (ii) \$5 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal entity within a 36-month period, to be assessed and collected by the Department as other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a civil penalty of \$25 per pack, up to \$250,000.

B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess less than 3,000 500 packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess 3,000 500 or more packages of cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony.

D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as

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SB1267

59 provided in § 58.1-1011, or (ii) is not a retail dealer who has lawfully purchased cigarettes from such  
60 permit holder has in his possession within the Commonwealth more than 30 packages of unstamped  
61 cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes  
62 due thereon. No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil  
63 penalty under § 58.1-1013 has been paid for such unstamped cigarettes.  
64