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## SENATE BILL NO. 347

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 9, 2012)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend and reenact §§ 58.1-1000 and 58.1-1037 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.1, relating to tax-paid contraband cigarettes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000 and 58.1-1037 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.1 as follows:

§ 58.1-1000. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a retail dealer; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation indicating the true name and address of the consignor or seller and the consignee or purchaser of the brands and the quantities being transported.

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Exclusive distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200.

"Pack" means a package containing either 20 or 25 cigarettes.

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes and who is properly registered as a retail trade with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1).

"Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to retail dealers or other wholesale dealers for resale.

"Stamping agent" shall have the same meaning as provided in § 3.2-4204. For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" shall include "distributor" as that term is defined in § 58.1-1021.01.

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp which will effectuate the purposes of this chapter including but not limited to decalcomania and metering devices.

"Storage" means any keeping or retention in the Commonwealth of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside the Commonwealth.

"Tax-paid cigarettes" means cigarettes that (i) bear valid Virginia stamps to evidence payment of excise taxes or (ii) were purchased outside of the Commonwealth and either (a) bear a valid tax stamp

60 *for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state,*  
61 *proper evidence can be provided to establish that applicable excise taxes have been paid.*

62 "Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or  
63 by any transaction where possession is given, except that it shall not include the sale of cigarettes in the  
64 regular course of business.

65 "Wholesale dealer" includes persons who *are properly registered as tobacco product merchant*  
66 *wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business*  
67 *Registration Application (Form R-1) and who (i) sell cigarettes at wholesale only to retail dealers for the*  
68 *purpose of resale only; or who (ii) sell at wholesale to institutional, commercial, or industrial users. The*  
69 *phrase shall also include "Wholesale dealer" also includes chain store distribution centers or houses*  
70 *which distribute cigarettes to their stores for sale at retail.*

71 § 58.1-1017.1. *Possession with intent to distribute tax-paid, contraband cigarettes; penalty.*

72 *Any person other than an authorized holder who possesses, with intent to distribute, more than 5,000*  
73 *(25 cartons) tax-paid cigarettes is guilty of a Class 2 misdemeanor for a first offense and is guilty of a*  
74 *Class 1 misdemeanor for any second or subsequent offense. Additionally, any person who violates the*  
75 *provisions of this section shall be assessed a civil penalty of (i) \$2.50 per pack, but no more than*  
76 *\$5,000, for a first offense; (ii) \$5 per pack, but no more than \$10,000, for a second such offense*  
77 *committed within a 36-month period; and (iii) \$10 per pack, but no more than \$50,000, for a third or*  
78 *subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and*  
79 *collected by the Department as other taxes are collected.*

80 § 58.1-1037. *Seizure.*

81 Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or  
82 distributed in the Commonwealth in violation of this chapter shall be deemed contraband and shall be  
83 subject to seizure, forfeiture ~~and~~, *destruction, or court-ordered assignment for use by a law-enforcement*  
84 *undercover operation.* Such cigarettes shall be deemed contraband whether or not the violation of this  
85 chapter is with knowledge.