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HOUSE BILL NO. 1820

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact § 58.1-1017 of the Code of Virginia, relating to unstamped cigarettes; sale, transport, possession, etc.; penalties.*

Patrons—Ware, O., Gilbert and Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1017 of the Code of Virginia is amended and reenacted as follows:

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

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

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