

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 58.1-1017 of the Code of Virginia, relating to sale, purchase,*
 3 *possession, etc., of cigarettes for purpose of evading tax; penalties.*

4 [H 1820]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 58.1-1017 of the Code of Virginia is amended and reenacted as follows:**8 **§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax; penalties.**

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

18 B. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
 19 transport, receive or possess less than ~~3,000~~ 500 packages of cigarettes unless the same have been
 20 stamped in the manner required by law, for the purpose of evading the payment of the taxes on such
 21 products. Any person violating the provisions of this subsection ~~shall be~~ is guilty of a Class 2 1
 22 misdemeanor. *Any person who is convicted of a second or subsequent violation of this subsection is*
 23 *guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between*
 24 *each conviction and it is admitted, or found by the jury or judge before whom the person is tried, that*
 25 *the accused was previously convicted of a violation of this subsection.*

26 C. It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase,
 27 transport, receive or possess ~~3,000~~ 500 or more packages of cigarettes unless the same have been
 28 stamped in the manner required by law, for the purpose of evading the payment of the taxes on such
 29 products. Any person violating the provisions of this subsection shall be guilty of a Class 6 felony. *Any*
 30 *person who is convicted of a second or subsequent violation of this subsection is guilty of a Class 5*
 31 *felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction and it*
 32 *is admitted, or found by the jury or judge before whom the person is tried, that the accused was*
 33 *previously convicted of a violation of this subsection.*

34 D. If a person who (i) has not been issued a permit to affix revenue stamps by the Department, as
 35 provided in § 58.1-1011, or (ii) is not a retail dealer who has lawfully purchased cigarettes from such
 36 permit holder has in his possession within the Commonwealth more than 30 packages of unstamped
 37 cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes
 38 due thereon. No civil penalty shall be imposed under this section for any unstamped cigarettes if a civil
 39 penalty under § 58.1-1013 has been paid for such unstamped cigarettes.

40 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
 41 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
 42 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
 43 **3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing**
 44 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
 45 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
 46 **custody of the Department of Juvenile Justice.**

ENROLLED

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