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HOUSE BILL NO. 2056

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact §§ 18.2-246.13, 18.2-246.14, 18.2-246.15, and 19.2-245.01 of the Code of Virginia, relating to counterfeit cigarettes; penalties.

Patrons—Herring, Gilbert and Ware, O.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-246.13, 18.2-246.14, 18.2-246.15, and 19.2-245.01 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-246.13. Civil penalties; penalties.

A. ~~Except as specifically~~ *In addition to any criminal penalties for violations of this article and except for civil penalties otherwise* provided in ~~§ 18.2-246.14~~ *this article*, a first violation of any provision of this article shall be punishable by a civil penalty of no more than $1,000. A second or subsequent violation of any provision of this article shall be punishable by a civil penalty of no more than $10,000.

B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of § 18.2-246.8 shall be subject to a civil penalty of no more than $5,000 for each such offense.

C. Any person failing to collect or remit to the Board or the Department of Taxation any tax required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty, a civil penalty of no more than five times the retail value of the cigarettes involved.

D. Any civil penalty collected under this article shall be paid to the general fund.

E. Any person who fails to file the statement required by subsection A of § 18.2-246.11 and thereafter makes a delivery sale is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

F. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a statement filed as required by subsection A of § 18.2-246.11 which is false is guilty of a violation of § 18.2-498.3. Each such filed statement containing one or more false statements shall constitute a separate offense.

G. Any person who fails to make the report required by subsection B of § 18.2-246.11 is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

H. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a materially false statement in any report required by subsection B of § 18.2-246.11 is guilty of a violation of § 18.2-498.3. Each such report containing one or more false statements constitutes a separate offense.

§ 18.2-246.14. Counterfeit cigarettes; penalty; civil penalty.

A. It ~~shall be~~ *is* unlawful to ~~sell~~ *distribute* or possess counterfeit cigarettes.

B. *Any person who knowingly distributes or possesses with the intent to distribute a total quantity of less than 10 cartons of counterfeit cigarettes is guilty of a Class 1 misdemeanor. Any person who is convicted of a second or subsequent offense involving a total quantity of less than 10 cartons of counterfeit cigarettes is guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction, and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this subsection. Any person who knowingly distributes or possesses with the intent to distribute a total quantity of 10 or more cartons of counterfeit cigarettes is guilty of a Class 6 felony.*

C. Any person who knowingly violates subsection A with a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than $1,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes, be punished by a civil penalty of no more than $5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

~~C.~~ *D.* Any person who knowingly violates subsection A with a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than $2,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes, be punished by a civil penalty of no more than $50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

For purposes of this section, counterfeit cigarettes shall include but not be limited to cigarettes that (i) have false manufacturing labels, (ii) are not manufactured by the manufacturer indicated on the

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container, or (iii) have affixed to the container a false tax stamp.

§ 18.2-246.15. Enforcement.

The Attorney General is authorized to enforce the provisions of this article. The Attorney General may assess the civil penalties authorized by this article, with the concurrence of the attorney for the Commonwealth pursuant to § 2.2-511, may prosecute criminal violations under ~~§ 18.2-246.13~~ *this article*, and may bring an action in the appropriate court to collect assessed penalties or prevent or restrain violations of this article by any person, or any person controlling such person. The Board and the State Department of Taxation shall cooperate with the Attorney General in his enforcement efforts and provide to the Attorney General all information and documentation in their possession necessary for the Attorney General to accomplish such enforcement.

§ 19.2-245.01. Offenses involving reports or statements concerning cigarette sales or stamping.

Any criminal violation of Chapter 42 (§ 3.2-4200 et seq.) of Title 3.2 ~~or~~ ~~of~~ ~~§~~ ~~18.2-246.13~~, *Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2,* or *§* 18.2-514 involving reports or statements concerning cigarette sales or stamping may be prosecuted in the City of Richmond.

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.