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HOUSE BILL NO. 853

House Amendments in [] — February 6, 2014

A *BILL to amend and reenact §§ 19.2-215.1, 19.2-386.21, 58.1-1000, 58.1-1001, 58.1-1012, and 58.1-1017.1 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 58.1-1017.2, relating to the administration and enforcement of Virginia's cigarette laws.*

Patron Prior to Engrossment—Delegate Gilbert

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-215.1, 19.2-386.21, 58.1-1000, 58.1-1001, 58.1-1012, and 58.1-1017.1 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 58.1-1017.2 as follows:

§ 19.2-215.1. Functions of a multijurisdiction grand jury.

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

- a. Title 10.1 for which punishment as a felony is authorized;
 - b. § 13.1-520;
 - c. §§ 18.2-47 and 18.2-48;
 - d. §§ 18.2-111 and 18.2-112;
 - e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;
 - f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;
 - g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;
 - h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;
 - i. § 18.2-434, when violations occur before a multijurisdiction grand jury;
 - j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;
 - k. § 18.2-460 for which punishment as a felony is authorized;
 - l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;
 - m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;
 - n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;
 - o. Article 9 (§ 3.2-6570 et seq.) of Chapter 65 of Title 3.2;
 - p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
 - q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;
 - r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2;
 - s. Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1;
 - t. § 18.2-178 where the violation involves insurance fraud;
 - u. § 18.2-356;
 - v. Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2;
 - w. Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2;
 - x. Malicious felonious assault and malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
 - y. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2;
 - z. Felonious sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
 - aa. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
 - bb. Chapter 13 (§ 18.2-512 et seq.) of Title 18.2; and
 - cc. Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1 and § 18.2-246.14; and
 - dd. Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.
2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated and, when appropriate, to the Attorney General.

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59 3. To consider bills of indictment prepared by a special counsel to determine whether there is
60 sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which
61 allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

62 4. The provisions of this section shall not abrogate the authority of an attorney for the
63 Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

64 **§ 19.2-386.21. Forfeiture of counterfeit and contraband cigarettes.**

65 Counterfeit cigarettes possessed in violation of § 18.2-246.14 and cigarettes possessed in violation of
66 § 58.1-1017 or 58.1-1017.1 shall be subject to seizure, forfeiture, and destruction *or court-ordered*
67 *assignment for use by a law-enforcement undercover operation* by the Virginia Alcoholic Beverage
68 Control Board or any law-enforcement officer of the Commonwealth. [*However, any undercover*
69 *operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain*
70 *under the command and control of law enforcement and shall not be distributed to a member of the*
71 *general public who is not the subject of a criminal investigation.*] All fixtures, equipment, materials,
72 and personal property used in substantial connection with (i) the sale or possession of counterfeit
73 cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of
74 Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of
75 § 58.1-1017 or 58.1-1017.1 shall be subject to seizure and forfeiture according to the procedures
76 contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied mutatis mutandis.

77 **§ 58.1-1000. Definitions.**

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

79 "Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a
80 retail dealer; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United States
81 or a state, or any department, agency, or instrumentality of the United States, a state, or a political
82 subdivision of a state, having possession of cigarettes in connection with the performance of official
83 duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to
84 § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading
85 or other documentation indicating the true name and address of the consignor or seller and the consignee
86 or purchaser of the brands and the quantities being transported. *Any person convicted of a violation of*
87 *§ 58.1-1017 or 58.1-1017.1 is ineligible to be an authorized holder.*

88 "Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing
89 25 cigarettes.

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

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

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

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

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

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

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

117 "Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid
118 and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to
119 provide for the use of any type of stamp which will effectuate the purposes of this chapter including but
120 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 for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state, proper evidence can be provided to establish that applicable excise taxes have been paid.

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

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

§ 58.1-1001. Tax levied; rate.

A. Except as provided in subsection B, in addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of one and one-quarter mills on each such cigarette sold, stored or received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents on each such cigarette sold, stored or received on and after July 1, 2005.

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of 10% of the manufacturer's sales price of such roll-your-own tobacco.

C. The revenues generated by the taxes imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

D. The provisions of this section shall not apply to members of federal, state, county, city, or town law-enforcement agencies when possession of unstamped cigarettes is necessary in the performance of investigatory duties.

§ 58.1-1012. Duties of wholesale dealer, manufacturer and exclusive distributor on shipping, delivering or sending out cigarettes.

A. Every wholesale dealer in the Commonwealth shall, before shipping, delivering or sending out any cigarettes to any dealer in the Commonwealth or for sale in the Commonwealth, cause the same to have the requisite denominations and amount of stamps to represent the tax affixed as stated herein, and every other wholesale dealer shall at the time of shipping or delivering any cigarettes make a true duplicate invoice of the same, showing the date, amount and value of each class of articles shipped or delivered, and retain a duplicate thereof. Wholesale dealers in the Commonwealth who ship, deliver, or send any cigarettes to the United States government for sale or distribution to any military, naval or marine reservation owned by the United States government within the Commonwealth shall be required to carry out the provisions set out in this chapter for such sales or deliveries.

B. Any manufacturer or exclusive distributor shall not be required to affix Virginia revenue stamps as required by subsection A, if such manufacturer or exclusive distributor is shipping, sending, selling, or delivering the cigarettes to a wholesale dealer in the Commonwealth who is a duly qualified wholesale dealer stamping agent in accordance with § 58.1-1011 *or to a law-enforcement agency for use in the performance of its duties.* The manufacturer or exclusive distributor who qualifies under this section and ships, sends, sells, or delivers cigarettes to a wholesale dealer shall keep on file a record of each such shipment, sale, or delivery and shall maintain such record for a period of three years.

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

Any person ~~other than an authorized holder~~ who possesses, with intent to distribute, more than 5,000 (25 cartons) but fewer than 100,000 (500 cartons) tax-paid cigarettes is guilty of a Class 1 misdemeanor for a first offense and is guilty of a Class 6 felony for any second or subsequent offense. Any person ~~other than an authorized holder~~ who possesses, with intent to distribute, 100,000 (500 cartons) or more tax-paid cigarettes is guilty of a Class 6 felony for a first offense and is guilty of a Class 5 felony for a second or subsequent offense. Additionally, any person who violates the provisions of this section shall be assessed a civil penalty of (i) \$2.50 per pack, but no [~~more~~ less] than \$5,000, for a first offense; (ii) \$5 per pack, but no [~~more~~ less] than \$10,000, for a second such offense committed within a 36-month period; and (iii) \$10 per pack, but no [~~more~~ less] than \$50,000, for a third or subsequent

182 such offense committed within a 36-month period. The civil penalties shall be assessed and collected by
183 the Department as other taxes are collected.

184 *The provisions of this section shall not apply to an authorized holder.*

185 ***§ 58.1-1017.2. Sealed pack labeled as cigarettes; prima facie evidence of cigarettes.***

186 *In any prosecution for violations of this title, where a sealed pack is labeled as containing cigarettes,*
187 *such labeling shall be prima facie evidence that the contents of the pack meet the definition of*
188 *"cigarette" as defined by § 58.1-1000. Nothing shall preclude the introduction of other relevant evidence*
189 *to establish the contents of a pack, whether sealed or not.*