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SENATE BILL NO. 285

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 29, 2014)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact § 58.1-1021.04:3 of the Code of Virginia, relating to civil penalty for untaxed tobacco products.

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-1021.04:3 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-1021.04:3. Unlawful importation, transportation, or possession of tobacco products; civil penalty.**

A. It shall be unlawful for any person who is not a licensed distributor in the Commonwealth pursuant to this article to import, transport, or possess, for resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate that tobacco products are being imported, transported, or possessed in a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article. Such tobacco products shall be subject to seizure, forfeiture, and destruction by the Department or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of this article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, applied mutatis mutandis.

B. Any person, except as otherwise provided by law, who imports, transports, or possesses for resale tobacco products upon which the tax imposed by this article has not been paid shall be required to pay any tax owed pursuant to this article. In addition, if such person imports, transports, or possesses such tobacco products in such a manner as to knowingly and intentionally evade or attempt to evade the tax imposed by this article, he shall be required to pay a civil penalty of (i) \$2.50 per tobacco product, up to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco product, up to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco product, up to \$50,000, for the third or subsequent violation by the person 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 article, such person shall be required to pay a civil penalty of \$25 per tobacco product, up to \$250,000.