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SENATE BILL NO. 365

Senate Amendments in [] — February 3, 2014

A *BILL to amend and reenact §§ 19.2-386.21, 58.1-1001, and 58.1-1012 of the Code of Virginia, relating to forfeiture of counterfeit and contraband cigarettes; use by law enforcement.*

Patrons Prior to Engrossment—Senators Reeves and Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.21, 58.1-1001, and 58.1-1012 of the Code of Virginia are amended and reenacted as follows:

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

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

§ 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

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60 section and ships, sends, sells, or delivers cigarettes to a wholesale dealer shall keep on file a record of
61 each such shipment, sale, or delivery and shall maintain such record for a period of three years.