

VIRGINIA ACTS OF ASSEMBLY -- 2015 RECONVENED SESSION

CHAPTER 738

An Act to amend and reenact §§ 58.1-1000 and 58.1-1007 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-4206.01, relating to authorized holders of cigarettes.

[H 1955]

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000 and 58.1-1007 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-4206.01 as follows:

§ 3.2-4206.01. List of persons ineligible to be authorized holders.

A. The Attorney General shall develop and publish on its website a list of individuals who are ineligible to be authorized holders as defined in § 58.1-1000. The Attorney General shall update the list as necessary to add names of individuals who are no longer eligible to be authorized holders. Upon request, the Office of the Executive Secretary of the Supreme Court shall provide the Attorney General with assistance to ensure that the requirements of this section are met.

B. Any attorney for the Commonwealth, law-enforcement officer, or other person may submit a request to the Attorney General that a person be included on the list and shall submit a certified court order of the conviction that makes the person ineligible to be an authorized holder of cigarettes.

C. Nothing in this section shall impose an affirmative duty on the Attorney General to identify persons to be included on the list who are ineligible to be authorized holders of cigarettes due to a conviction in another state, in the absence of a request received from an attorney for the Commonwealth, law-enforcement officer, or other person.

D. No liability shall be imposed upon the Attorney General for any omissions or the incorrect inclusion of any individual on the listing required under subsection A. No liability shall be imposed upon any attorney for the Commonwealth or law-enforcement official who provides information to the Attorney General in accordance with subsection B. This provision shall not be construed to grant immunity for gross negligence or willful misconduct.

§ 58.1-1000. Definitions.

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

"Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer; (iii) a stamping agent; (iv) a retail dealer; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation indicating the true name and address of the consignor or seller and the consignee or purchaser of the brands and the quantities being transported. Any person convicted of (a) a violation of § 58.1-1017 or 58.1-1017.1; (b) any offense involving the forgery of any documents, forms, invoices, or receipts related to the purchase or sale of cigarettes or the purchase or sale of tobacco products as defined in § 58.1-1021.01; (c) any offense involving evasion or failure to pay a cigarette or tobacco product excise tax; or (d) any similar violation of an ordinance of any county, city, or town in the Commonwealth or the laws of any other state or of the United States is ineligible to be an authorized holder.

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

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

"Exclusive distributor" means any individual, corporation, limited liability company, or limited

liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

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

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

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

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

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

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp which will effectuate the purposes of this chapter including but 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.

§ 58.1-1007. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection; penalty.

It shall be the duty of every person receiving, storing, selling, handling or transporting cigarettes in any manner whatsoever, to preserve all invoices, books, papers, cancelled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years. All such invoices, books, papers, cancelled checks or other memoranda and records shall be subject to audit and inspection *at all times* by any duly authorized representative of the Department ~~at all times, the Office of the Attorney General, or the Department of Alcoholic Beverage Control or by a local cigarette tax administrative or enforcement official.~~ Any person who fails or refuses to keep and preserve the records as ~~herein~~ required *in this section* shall be guilty of a Class 2 misdemeanor. Any person who, upon request by a duly authorized agent of the Department ~~who is entitled to audit and inspect such records,~~ fails or refuses to allow an audit or inspection of records as ~~hereinabove~~ provided; *in this section* shall have his stamping permit suspended until such time as the ~~audit or inspection~~ *Department audit or inspection* is allowed ~~to audit or inspect the records.~~ The Department may impose a penalty of \$1,000 for each day that the person fails or refuses to allow an audit or inspection of the records. The penalty shall be assessed and collected by the Department as other taxes are collected.