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HOUSE BILL NO. 1807**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 16, 2015)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact § 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 58.1-1017.3, relating to cigarettes; contraband; fraudulent purchase; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1017.1 of the Code of Virginia is 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 58.1-1017.3 as follows:

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

Any person who possesses, with intent to distribute, more than 5,000 (25 cartons) but fewer than ~~100,000 (500 cartons)~~ 40,000 (200 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 who possesses, with intent to distribute, ~~100,000 (500 cartons)~~ 40,000 (200 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 less than \$5,000, for a first offense; (ii) \$5 per pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (iii) \$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the Department as other taxes are collected.

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

§ 58.1-1017.3. Fraudulent purchase of cigarettes; penalties.

Any person who purchases 5,000 (25 cartons) cigarettes or fewer using a forged business license, a business license obtained under false pretenses, a forged or invalid Virginia sales and use tax exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. Any person who purchases more than 5,000 (25 cartons) cigarettes using a forged business license, a business license obtained under false pretenses, or a forged or invalid Virginia sales and use tax exemption certificate, or a Virginia sales and use tax exemption certificate obtained under false pretenses is guilty of a Class 6 felony for a first offense and 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 less than \$5,000, for a first offense; (ii) \$5 per pack, but no less than \$10,000, for a second such offense committed within a 36-month period; and (iii) \$10 per pack, but no less than \$50,000, for a third or subsequent such offense committed within a 36-month period. The civil penalties shall be assessed and collected by the Department as other taxes are collected.

The provisions of this section shall not preclude prosecution under any other statute.

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 2 of the Acts of Assembly of 2014, 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.

3. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2015 by the General Assembly that becomes law.