

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act 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.*

[S 1231]

Approved

**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, 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.**