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SENATE BILL NO. 1092

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact § 58.1-1009 of the Code of Virginia, relating to the payment of cigarette taxes; certain bond or irrevocable letter of credit requirements.

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1009 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-1009. Preparation, design, and sale of stamps; unlawful sale or purchase of stamps a felony; penalty.

A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind of stamps to be used. Stamps so adopted and promulgated shall be known as and termed "Virginia revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as "Virginia revenue stamps."

Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes, or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty of a Class 6 felony. When stamping agents have qualified as such with the Department, as provided in § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered by them, the Department shall allow to each stamping agent on such sales of revenue stamps a discount equal to two percent of the total charged to the stamping agent by the Department for the purchase of the revenue stamps. The Tax Commissioner shall prepare for each fiscal year an estimate of the total amount of all discounts allowed to stamping agents pursuant to this subsection and such amount shall be taken into consideration in preparing the official estimate of the total revenues to be collected during the fiscal year by the Virginia Health Care Fund established under § 32.1-366. Any reduction in funding available for programs financed by the Virginia Health Care Fund as a result of such discounts shall be made up by the general fund.

All stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of cigarettes, by means of a serial number or other mark on the stamp. The Department shall maintain for not less than three years information identifying which wholesale dealer or retail dealer affixed the revenue stamp to each package of cigarettes.

B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.

In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the a face amount of approximately determined by the Tax Commissioner to be satisfactory to cover possible losses resulting from the failure to remit taxes due but not exceeding two times the anticipated average monthly amount in purchases of Virginia revenue stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or authorized to do business in the Commonwealth under the banking laws of the United States, or a federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax) for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30 days immediately following the date that the related revenue stamp or stamps were provided by the Department to such wholesale dealer. Any such bond shall be so

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59 written that, on timely payment of the premium thereon, it shall continue in force from year to year
60 unless sooner terminated.

61 2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any and
62 all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the date
63 upon which such surety shall have lodged with the Commissioner written request to be released and
64 discharged. But such request shall not operate to relieve, release or discharge such surety from any
65 liability already accrued or which shall accrue before the expiration of such 60-day period. The
66 Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such
67 bond. Unless such dealer on or before the expiration of such 60 days' notice files with the
68 Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the
69 Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter
70 concurrent with obtaining revenue stamps from the Department.

71 In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the
72 Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or
73 otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or
74 unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless
75 such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner
76 shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with
77 obtaining revenue stamps from the Department.

78 3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause,
79 shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining
80 revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to file
81 the bond or letter of credit described in this subsection.

82 C. In addition to any other penalties provided by law, the Department may revoke the permit issued,
83 in accordance with § 58.1-1011, to any person who violates any provision of this section.