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SENATE BILL NO. 956

Offered January 8, 2003

Prefiled January 7, 2003

A *BILL to amend and reenact §§ 58.1-1000, 58.1-1003, 58.1-1006 through 58.1-1017, 58.1-1034, 58.1-1035 and 58.1-1037 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 18 of Title 3.1 an article numbered 6, consisting of sections numbered 3.1-336.3 through 3.1-336.16; by adding a section numbered 58.1-1015.1 and by adding in Chapter 10 of Title 58.1 an article numbered 4, consisting of sections numbered 58.1-1022.1 through 58.1-1022.9; relating to sales of cigarettes.*

Patron—Stosch

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000, 58.1-1003, 58.1-1006, through 58.1-1017, 58.1-1034, 58.1-1035 and 58.1-1037 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 18 of Title 3.1 an article numbered 6, consisting of sections numbered 3.1-336.3 through 3.1-336.16; by adding a section numbered 58.1-1015.1; and by adding in Chapter 10 of Title 58.1 an article numbered 4, consisting of sections numbered 58.1-1022.1 through 58.1-1022.9 as follows:

*Article 6.**Enforcement of Requirements for Tobacco Product Manufacturers.**§ 3.1-336.3. Definitions.**As used in this article:*

"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

"Commissioner" means the Tax Commissioner of the Department of Taxation.

"Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

"Stamping agent" means (i) a person who is authorized to affix tax stamps to packages or other containers or cigarettes under Article 1 (§ 58.1-1000 et seq.) of Chapter 10 of Title 58.1 or any regulations promulgated or guidelines issued thereto; or (ii) any person that is required to pay the excise tax imposed on cigarettes pursuant to § 58.1-1001.

Terms defined in § 3.1-336.1 shall have the same meaning when used in this article.

§ 3.1-336.4. Certifications.

A. Every tobacco product manufacturer whose cigarettes are sold in the Commonwealth whether directly or through a distributor, retailer, or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the Commissioner a certification to the Commissioner and Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is a participating manufacturer; or is in full compliance with Article 5 (§ 3.1-336.1 et seq.) of this chapter.

B. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and the Commissioner.

C. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families (i) separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the Commonwealth during the preceding calendar year; (ii) all of its brand families that have been sold in the Commonwealth at any time during the current calendar year; (iii) indicated by an asterisk, any brand family sold in the Commonwealth during the preceding calendar year that is no longer being sold in the Commonwealth as of the date of such certification; and (iv) identifying by name and address, any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the

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59 *Attorney General and the Commissioner.*

60 *D. In the case of a nonparticipating manufacturer, such certification shall further certify:*

61 *1. That such nonparticipating manufacturer is registered to do business in the Commonwealth or has*
62 *appointed a resident agent for service of process and provided notice thereof as required by § 3.1-336.7.*

63 *2. That such nonparticipating manufacturer has (i) established and continues to maintain a qualified*
64 *escrow fund as that term is defined in Article 5 (§ 3.1-336.1 et seq.) of this chapter; and (ii) executed a*
65 *qualified escrow agreement that has been reviewed and approved by the Attorney General and that*
66 *governs the qualified escrow fund.*

67 *3. That such nonparticipating manufacturer is in full compliance with Article 5 (§ 3.1-336.1 et seq.)*
68 *of this chapter and this article, and any regulations promulgated pursuant thereto.*

69 *4. The (i) name, address, and telephone number of the financial institution where the*
70 *nonparticipating manufacturer has established such qualified escrow fund required pursuant to Article 5*
71 *of this chapter and all regulations promulgated or guidelines issued pursuant thereto; (ii) account*
72 *number of such qualified escrow fund and subaccount number for the Commonwealth; (iii) amount such*
73 *nonparticipating manufacturer placed in such fund for cigarettes sold in the Commonwealth during the*
74 *preceding calendar year, the date or dates and amount of each such deposit, and such evidence or*
75 *verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (iv)*
76 *amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at*
77 *any time from such fund or from any other qualified escrow fund into which it has at any time made*
78 *escrow payments pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter and all regulations*
79 *promulgated and guidelines issued pursuant thereto.*

80 *E. A tobacco product manufacturer may not include a brand family in its certification unless (i) in*
81 *the case of a participating manufacturer, such participating manufacturer affirms that the brand family*
82 *is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement*
83 *Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement*
84 *Agreement; and (ii) in the case of a nonparticipating manufacturer, said nonparticipating manufacturer*
85 *affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 5 (§ 3.1-336.1*
86 *et seq.) of this chapter. Nothing in this section shall be construed as limiting or otherwise affecting the*
87 *Commonwealth's right to maintain that a brand family constitutes cigarettes of a different tobacco*
88 *product manufacturer for purposes of calculating payments under the Master Settlement Agreement or*
89 *for purposes of Article 5 of this chapter.*

90 *F. The tobacco product manufacturers shall maintain all invoices and documentation of sales and*
91 *other such information relied upon for such certification for a period of 5 years, unless otherwise*
92 *required by law to maintain them for a greater period of time.*

93 *§ 3.1- 336.5. Directory of cigarettes approved for stamping and sale.*

94 *A. Not later than October 1, 2003, the Attorney General shall develop and publish on its website a*
95 *directory listing all tobacco product manufacturers that have provided current and accurate*
96 *certifications conforming to the requirements of § 3.1-336.4 and all brand families that are listed in*
97 *such certifications (the "Directory"), except as noted below.*

98 *1. The Attorney General shall not include or retain in such Directory the name or brand families of*
99 *any nonparticipating manufacturer that fails to provide the required certification or whose certification*
100 *the Attorney General determines is not in compliance with subsections C and D of § 3.1-336.4, unless*
101 *the Attorney General has determined that such violation has been cured to the satisfaction of the*
102 *Attorney General.*

103 *2. Neither a tobacco product manufacturer nor brand family shall be included or retained in the*
104 *Directory if the Attorney General concludes that (i) in the case of a nonparticipating manufacturer all*
105 *escrow payments required pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter for any period for*
106 *any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid*
107 *into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the*
108 *Attorney General, or (ii) all outstanding final judgments, including interest thereon, for violations of*
109 *Article 5 (§ 3.1-336.1 et seq.) of this chapter have not been fully satisfied for such brand family and*
110 *such manufacturer.*

111 *B. The Attorney General shall update the Directory as necessary in order to correct mistakes and to*
112 *add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity*
113 *with the requirements of this article.*

114 *C. Every stamping agent shall provide and update as necessary an electronic mail address to the*
115 *Attorney General for the purpose of receiving any notifications as may be required by this article.*

116 *§ 3.1-336.6. Prohibition against stamping or sale or import of cigarettes not in the Directory.*

117 *It shall be unlawful for any person (i) to affix a stamp to a package or other container of cigarettes*
118 *of a tobacco product manufacturer or brand family not included in the Directory, or (ii) to sell, offer,*
119 *or possess for sale in the Commonwealth, or import for personal consumption into the Commonwealth,*
120 *cigarettes of a tobacco product manufacturer or brand family not included in the Directory. For*

purposes of this article a person shall be deemed to have received notice that cigarettes of a tobacco product manufacturer or brand family are not included in the Directory at the time the Attorney General's website fails to list any such cigarettes in the Directory or at the time any such cigarettes are removed from the Directory.

§ 3.1-336.7. Agent for service of process.

A. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the Directory, appoint and continually engage without interruption the services of an agent in the Commonwealth to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article or Article 5 (§ 3.1-336.1 et seq.) of this chapter may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of such agent to and to the satisfaction of the Commissioner and Attorney General.

B. The nonparticipating manufacturer shall provide notice to the Commissioner and Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Commissioner and Attorney General of said termination within 5 calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

C. Any nonparticipating manufacturer whose products are sold in this state, without appointing or designating an agent as herein required, shall be deemed to have appointed the Secretary of the Commonwealth as such agent and may be proceeded against in courts of the Commonwealth by service of process upon the Secretary of the Commonwealth; however, the appointment of the Secretary of the Commonwealth as such agent shall not satisfy the condition precedent to having its brand families listed or retained in the Directory.

§ 3.1-336.8. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit such information as the Commissioner and Attorney General require to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Commissioner and Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Commissioner and Attorney General for a period of 5 years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the Commissioner or Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this article.

§ 3.1-336.9. Escrow fund information.

The Attorney General may require at any time from the nonparticipating manufacturer proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Article 5 (§ 3.1-336.1 et seq.) of this chapter of the amount of money in such fund being held on behalf of the Commonwealth and the dates of deposits, and listing the amounts of all withdrawals from such fund and the dates thereof.

§ 3.1-336.10. Penalties and other remedies.

A. In addition to any other civil or criminal penalty or remedy provided by law, upon a determination that any person has violated § 3.1-336.6 or any regulation adopted pursuant thereto, the Commissioner may revoke or suspend such person's privilege to affix cigarette excise tax stamps pursuant to § 58.1-1003. Each stamp affixed and each offer to sell cigarettes in violation of § 3.1-336.6 shall constitute a separate violation. Upon a determination of a violation of § 3.1-336.6 or any regulations adopted pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth, or imported for personal consumption in the Commonwealth, in violation of § 3.1-336.6, shall be deemed contraband and may not be sold or offered for sale unless such cigarettes are placed on the Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the

182 procedures contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes
183 so confiscated and forfeited shall be destroyed and not resold.

184 C. The Attorney General, on behalf of the Commissioner, may seek an injunction to restrain a
185 threatened or actual violation of § 3.1-336.6, subsection A of § 3.1-336.7 or subsection B of § 3.1-336.7
186 by a stamping agent and to compel the stamping agent to comply with such provisions. In any action
187 brought pursuant to this subsection, the Commonwealth shall be entitled to recover the costs of
188 investigation, costs of the action and reasonable attorney fees.

189 D. It shall be unlawful for a person to: (i) sell or distribute cigarettes or (ii) acquire, hold, own,
190 possess, transport, import, or cause to be imported cigarettes that the person knows or should know are
191 intended for distribution or sale in the state in violation of § 3.1-336.6. A violation of this section shall
192 be a Class 2 misdemeanor.

193 E. In addition to any other penalty provided by law, a violation of § 3.1-336.6 shall constitute a
194 prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the
195 enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

196 § 3.1-336.11. Notice and review of determination.

197 A determination of the Attorney General to not list or to remove from the Directory a brand family
198 or tobacco product manufacturer shall be subject to review in the manner prescribed by the
199 Administrative Process Act (§ 2.2-4000 et seq.).

200 § 3.1-336.12. Promulgation of regulations.

201 The Commissioner and Attorney General may promulgate regulations necessary to implement the
202 purposes of this article.

203 § 3.1-336.13. Pleadings in English sufficient.

204 In any action brought by the Commonwealth to enforce this article or Article 5 (§ 3.1-336.1 et seq.)
205 of this chapter, sufficient notice of the action to the alleged violator shall be given by a complaint
206 presented in the English language. The Commonwealth shall not be required to bear any expense of
207 translating such complaint into another language.

208 § 3.1-336.14. Recovery of costs and fees by Attorney General.

209 In any action brought by the Commonwealth to enforce this article or Article 5 (§ 3.1-336.1 et seq.)
210 of this chapter, or in any investigation prior to the filing of such action, and in addition to any civil or
211 criminal penalty or other amount that the court may determine, the Attorney General shall be entitled to
212 recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

213 § 3.1-336.15. Disgorgement of profits for violations.

214 If a court determines that a person has violated this article, the court shall order any profits, gain,
215 gross receipts, or other benefit from the violation to be disgorged and paid to the Treasurer of the
216 Commonwealth. Unless otherwise expressly provided, the remedies or penalties provided by this article
217 are cumulative to each other and to the remedies or penalties available under all other laws of the
218 Commonwealth.

219 § 3.1-336.16. Conflicts.

220 If a court of competent jurisdiction finds that the provisions of this article and of Article 5
221 (§ 3.1-336.1 et seq.) of this chapter conflict and cannot be harmonized, then the provision of Article 5
222 shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
223 article causes Article 5 to no longer constitute a qualifying or model statute, as those terms are defined
224 in the Master Settlement Agreement, then that portion of this article shall not be valid. If any section,
225 subsection, subdivision, paragraph, sentence, clause, or phrase of this article is for any reason held to
226 be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining
227 portions of this article or any part thereof.

228 § 58.1-1000. Definitions.

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

230 "Manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a
231 finished cigarette; or imports, either directly or indirectly, a finished cigarette for sale or distribution in
232 the United States.

233 "Person" means the same as that term is defined in § 1-13.19.

234 "Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who
235 sells or offers for sale any cigarettes.

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

238 "Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid
239 and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to
240 provide for the use of any type of stamp which will effectuate the purposes of this chapter including but
241 not limited to decalcomania and metering devices means tax stamps or tax-exempt stamps.

242 "Tax stamps" means the stamp or stamps by the use of which the tax levied under this chapter is
243 paid.

"Tax-exempt stamps" means the stamp or stamps or other indicia used to indicate that cigarettes are intended for sale or distribution in a transaction that is exempt from tax under this chapter.

"Storage" means any keeping or retention in this Commonwealth of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside this Commonwealth.

"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 sell cigarettes at wholesale only to retail dealers for the purpose of resale only, or who sell at wholesale to institutional, commercial or industrial users. The phrase shall also include chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail. *Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. § 5712, if such person sells or distributes cigarettes in the Commonwealth only to wholesale dealers or retail dealers who hold valid and current permits pursuant to § 58.1-1011, or to an export warehouse proprietor or another manufacturer.*

§ 58.1-1003. How paid; affixing of stamps; records of dealers.

A. The taxes imposed by this chapter shall be paid by affixing stamps equaling the amount of the tax in the manner and at the time herein set forth. *Only wholesale dealers and retail dealers who are duly qualified as such under § 58.1-1011 may apply tax and tax-exempt stamps and only to cigarette packages that they have received directly from a manufacturer or wholesale dealer who possesses a valid and current permit under § 58.1-1011, or from a manufacturer or wholesale dealer who is not required to possess a permit as provided in such section.*

Every wholesale dealer or retail dealer 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 affix a tax stamp to such cigarettes, unless the transaction is not subject to tax under this chapter, in which case a tax-exempt stamp shall be affixed. No stamp shall be applied to any cigarette exempt from tax under 26 U.S.C. § 5701 that is distributed by a manufacturer pursuant to federal regulations. The stamps shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp that will effectuate the purposes of this chapter including but not limited to decalcomania and metering devices.

The stamps shall be affixed to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this Commonwealth shall, within one hour after receipt of any unstamped cigarettes, begin affixing to the same a tax-exempt stamp or the requisite denominations and amount of tax stamp or tax stamps that represent the proper tax levied by this chapter. ~~Stamping shall be continued with reasonable diligence by the~~ The wholesale or retail dealer ~~until~~ shall apply stamps to all of the unstamped cigarettes ~~have been stamped within 72 hours of receipt;~~ however, any wholesale dealer engaged in interstate business shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Interstate stock shall be kept entirely separate from stamped stock in such a manner as to prevent the commingling of the interstate stock with the stamped stock. *No unstamped cigarettes shall be transferred by a wholesale dealer or retail dealer to another facility of the dealer within the borders of the Commonwealth or to another person within the borders of the Commonwealth. Any person who is doing business as both a wholesale dealer and a retail dealer shall maintain separate areas for stamped and unstamped cigarettes.*

B. Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article. Wholesale and retail dealers shall also keep a record of purchases of all cigarettes, and retain all books, records, and memoranda pertaining to the purchase and sale of such cigarettes.

C. Any wholesaler or retailer who fails or refuses to comply with any of the above provisions shall be guilty of a Class 42 misdemeanor.

§ 58.1-1006. Forms and kinds of containers, methods of breaking packages, and methods of affixing stamps; penalty for interfering with enforcement of article.

The Department shall provide by rules and regulations forms and kinds of containers, the methods of breaking packages and methods of affixing stamps that shall be employed by persons subject to the cigarette tax provisions of this chapter, thereby making possible the enforcement of payment of the cigarette tax by inspection. Any person subject to this tax engaging in or permitting such practices as are prohibited by rules and regulations of the Department or any person who upon demand of the Department or any of its officers or agents refuses to allow full inspection of the premises or any part thereof, or in any way interferes with any agent of the Department in the performance of his duties in enforcing this chapter, shall be guilty of a Class 2 misdemeanor.

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

305 to inspection.

306 It shall be the duty of every person *importing*, receiving, storing, selling, handling or transporting
307 cigarettes in any manner whatsoever (*except for retail transactions of 1,000 cigarettes or less*), to
308 preserve *on the premises* all invoices, books, papers, cancelled checks, or other documents relating to the
309 purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years. All such
310 invoices, books, papers, cancelled checks or other memoranda and records shall *show the name and*
311 *address of the other party and the quantity, by brand style, of the cigarettes involved in the transaction,*
312 *and shall* be subject to audit and inspection by any duly authorized representative of the Department at
313 all times. *The Tax Commissioner or his or designee and the United States Secretary of the Treasury or*
314 *his designee, upon request, shall have access to records required under this section and reports required*
315 *by §§ 58.1-1008 and 58.1-1008.1. The Department at its sole discretion may share such records and the*
316 *reports required by such sections with law-enforcement officials of the federal government or other*
317 *states.* Any person who fails or refuses to keep and preserve the records as herein required, or who upon
318 request by a duly authorized agent of the Department fails or refuses to allow an audit or inspection of
319 records as hereinabove provided, shall be guilty of a Class 2 misdemeanor.

320 § 58.1-1008. Monthly reports of wholesale and retail dealers; penalty.

321 Every wholesale *and retail dealer qualifying as such with the Department* shall be required to file a
322 report between the first and tenth of each month, covering the purchase or receipt by them of all
323 cigarettes during the preceding month. The report shall give in detail the different kinds and quantities
324 of cigarettes so purchased or received by them during the preceding month. The report shall also list all
325 orders for cigarettes purchased through such wholesale dealer from without this Commonwealth on a
326 drop shipment and consigned direct to the person ordering such cigarettes through such wholesale dealer
327 containing the information required by this section. In each case, the information required shall be
328 itemized or submitted separately for each of their places of business. The information that shall be
329 required is:

330 1. The quantities of cigarettes, by brand style, on hand both at the beginning and ending of the
331 immediately preceding month;

332 2. The quantities of cigarettes, by brand style and transaction, that were received during the
333 immediately preceding month and the name and address of each person from whom those products were
334 received; and

335 3. The quantities of cigarettes, by brand style and transaction, distributed or shipped during the
336 immediately preceding month (*except for retail transactions of 1,000 cigarettes or less*) and the name
337 and address of each person to whom those products were distributed or shipped.

338 The reports submitted pursuant to this section shall be further itemized to disclose the quantity of
339 reported cigarettes bearing tax stamps of the Commonwealth, tax-exempt stamps of the Commonwealth,
340 stamps of another state, and unstamped cigarettes (itemized to show, if known, the portion of the
341 unstamped cigarettes that are intended for sale or distribution in the Commonwealth). Such reports shall
342 include, if applicable, the quantity of Virginia tax and tax-exempt stamps that were not affixed to
343 cigarettes and that were on hand at the beginning and ending of the immediately preceding month, the
344 quantity of each type of Virginia stamp received during the immediately preceding month, and the
345 quantity of each type of Virginia stamp applied during the immediately preceding month.

346 In addition to the information required herein, a retailer shall report to the Department each sale or
347 distribution of more than 1,000 cigarettes to any person in any single transaction. A retailer shall not
348 knowingly sell more than 1,000 cigarettes to any person in any series of transactions in any two-day
349 period without filing the report required by this section.

350 The Department may issue regulations requiring such additional information in such reports as is
351 deemed necessary or appropriate for purposes of enforcing the provisions of this chapter.

352 If, upon examination of invoices of any wholesale dealer or retail dealer, such dealer is unable to
353 furnish evidence to the Department of sufficient stamp purchases to cover unstamped cigarettes
354 purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the
355 proper stamps affixed thereto in violation of § 58.1-1003. Any wholesaler or retail dealer failing or
356 refusing to file the report required by this section in the manner and time allowed shall be guilty of a
357 Class 2 misdemeanor.

358 § 58.1-1008.1. Monthly reports of tobacco product manufacturers.

359 Every manufacturer ~~producing cigarettes in or~~ shipping cigarettes into or within the Commonwealth
360 shall file a report with the Department between the first and tenth day of each month ~~identifying all~~
361 ~~purchasers of cigarettes by name and address with the quantities and brands of cigarettes purchased~~
362 ~~during the preceding month, and shall provide containing the information regarding such cigarettes~~
363 ~~required by § 58.1-1008 and any other information the Department deems appropriate for the~~
364 administration of this title or Article 5 (§ 3.1-336.1 et seq.) of Chapter 18 of Title 3.1. The Department
365 shall have the power to enter upon the premises of any such manufacturer during its regular business
366 hours to examine or cause to be examined, by any agent or representative designated by the Department

for that purpose, any books, papers, records, invoices, or memoranda, etc., relating to (i) the information required in such report, or (ii) the manufacturer's compliance with this section.

Public access to reports submitted under this section and § 58.1-1008 shall be provided under the procedures established by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). In no case, however, shall information about quantities of cigarettes by brand be released to anyone other than those permitted access under § 58.1-1007.

Any manufacturer subject to the provisions of this section who fails or refuses to file the report required by this section, or who upon request by a duly authorized agent or representative of the Department fails or refuses to allow an audit or inspection of records as provided herein, is guilty of a Class 2 misdemeanor. In addition, the Department may impose a civil penalty ~~not to exceed \$5,000 of \$1,000, or 5 times the retail value of the cigarettes involved, whichever is greater,~~ against any manufacturer subject to the provisions of this section for such failure or refusal. Each failure or refusal shall constitute a separate violation.

For the purposes of this section:

"~~Manufacturer~~" ~~means tobacco product manufacturer, as that term is defined in § 3.1-336.1.~~

"Purchasers" means any person or persons purchasing or receiving cigarettes for resale, including wholesalers and retailers, or any other person or persons purchasing cigarettes directly from a manufacturer within the Commonwealth.

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

The Department is hereby authorized and directed to have prepared and to sell stamps suitable for denoting the tax on, *or tax-exempt status of*, 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 wholesalers 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 on such sales of revenue stamps a discount of two and one-half cents per carton. In addition to any other penalties provided by law, the Department may revoke the permit issued, in accordance with § 58.1-1011, to any person who violates this section.

As used herein "carton" shall mean ten packs of cigarettes, each containing twenty cigarettes. 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. *Wholesale dealers and retail dealers shall not sell or provide such stamps to any other wholesale dealer or person.* 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.

§ 58.1-1010. Sale of unstamped and tax-exempt stamped cigarettes by wholesale dealers.

A. A wholesale dealer who is duly qualified as such under § 58.1-1011 may sell cigarettes without the Virginia revenue stamps affixed thereto, provided such cigarettes are sold and shipped or delivered in interstate commerce to a person outside this Commonwealth. Such wholesaler shall have on file a record of such sale, the original purchase order, a copy of the invoice therefor, and a receipt from a common carrier, contract carrier, or post office showing shipment for delivery in such other state, or, if delivered by such dealer to the purchaser at a point outside of this Commonwealth, a receipt showing such delivery in addition to the record, original purchase order and copy of the invoice relating to such sale.

B. Such duly qualified wholesaler may sell cigarettes without the Virginia revenue stamps affixed thereto, provided:

1. Such cigarettes are sold to a person who is engaged in business as a dealer in cigarettes in another state;

2. Such cigarettes are purchased exclusively for resale in the other state; and

3. Such cigarettes are at the time of sale properly stamped by the Virginia wholesaler with revenue stamps authorized and issued by the other state for use upon such cigarettes. A wholesaler shall have on file a record of each such sale, the original purchase order, a copy of the invoice therefor, a receipt from the purchaser showing that such purchase was made exclusively for resale in the other state, and a

record showing the purchase and use of such revenue stamps of the other state. Any such wholesaler with a place of business in a city located partly within and partly without this Commonwealth, or in a county adjoining such city, shall not be required to obtain such receipt from a purchaser from the other state, if the other state imposes a cigarette tax and if the cigarette tax in the other state is at a higher rate than the tax imposed by the Commonwealth of Virginia.

C. Cigarettes may be sold by duly qualified wholesalers, ~~without revenue~~ with tax-exempt stamps affixed thereto, when sold to the United States or to any instrumentality thereof for resale to or for the use or consumption by members of the armed services of the United States, or when sold to the Veterans Canteen Service of the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals and homes of the Veterans Administration, provided the books and records, including original purchase orders and copies of invoices showing such sales, are kept on file.

D. Cigarettes may be sold by duly qualified wholesalers, ~~without revenue~~ with tax-exempt stamps affixed thereto, when sold and delivered to ships regularly engaged in foreign commerce or coastwise shipping between points in this Commonwealth and points outside of this Commonwealth for resale to or for use or consumption upon such ship or in foreign commerce.

E. The Department is authorized to adopt rules and regulations with respect to the enforcement of the provisions of this section to prevent any evasion of the tax herein imposed.

A failure to comply with any provision of this section with respect to any sale of unstamped or tax-exempt stamped cigarettes shall subject the wholesaler to the payment of the tax thereon imposed by this chapter.

Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor.

§ 58.1-1011. Manufacturer's, wholesale dealer's, and retail dealer's permits.

No person may engage in business in the Commonwealth as a manufacturer, wholesale dealer or retail dealer of cigarettes without first obtaining from the Department a permit with respect to each such activity to be engaged in. Every wholesaler person who desires to qualify as such for a permit with the Department shall make application to the Department on blanks prescribed for this purpose, which shall be supplied upon request. The application blanks will require such information relative to the nature of business engaged in by the wholesaler as applicant including the name and address of the applicant; the address of the applicant's principal place of business; each place of business where the applicant's business will be conducted; and any other information the Department deems necessary to the qualifying of the wholesaler for qualification purposes. If the applicant is a firm, partnership, or association, the application shall state the name and address of each of its members. If the applicant is a corporation, the application shall state the name and address of each of its officers. If the Department after review of his application, believes the wholesaler applicant to be qualified, the Department shall issue to the wholesaler applicant a permit qualifying him as a manufacturer, wholesaler, or retailer as defined in this chapter; and he shall be allowed the discount on purchases of stamps as set out herein for wholesalers purchasing stamps for their individual use. The Department shall not sell stamps to any wholesaler until the wholesaler has complied with the provisions of this section. The Department shall, by regulation, specify the length of time for which a permit remains in effect. In no case, however, shall a permit issued under this section remain in effect for a period longer than 3 years.

Wholesalers shall be allowed the discount on purchases of stamps as set out herein for wholesalers purchasing stamps for their individual use. The Department shall not sell stamps to any wholesale dealer or retail dealer until the wholesale dealer or retail dealer has complied with the provisions of this section.

A retail dealer may obtain cigarettes only from a wholesale dealer with a valid current permit. A wholesale dealer or retail dealer may obtain cigarettes only from a manufacturer or wholesale dealer with a valid current permit. A manufacturer may import cigarettes only from a manufacturer holding a valid current permit. No manufacturer or wholesale dealer may sell cigarettes to any wholesale dealer or retail dealer that does not have a valid current permit. The Department shall create and maintain a website setting forth all valid current permits and the identity of permit holders, and shall update the site no less frequently than once per month.

The Department may at any time revoke the permit issued to any manufacturer, wholesaler dealer, or retailer dealer as hereinabove provided who is found guilty of violating any of the provisions of this chapter, or any of the rules of the Department adopted and promulgated under authority of this chapter. No permit may be granted, maintained, or renewed if the applicant or any combination of persons owning directly or indirectly, in the aggregate, more than 10 percent of the ownership interests in the applicant:

1. Owes \$500 or more in delinquent cigarette taxes;

2. Had a cigarette manufacturer, wholesale dealer or retail dealer permit revoked by the Department within the past 2 years;

3. *Has been convicted of a crime relating to cigarettes, including but not limited to, selling stolen or counterfeit cigarettes, receiving stolen cigarettes, or involvement in the smuggling or counterfeiting of cigarettes;*

4. *Has been convicted of a felony;*

5. *Is a cigarette manufacturer or importer that is neither (i) a participating manufacturer as defined in section II (jj) of the "Master Settlement Agreement" as such agreement is defined in § 3.1-336.1 or (ii) in full compliance with subdivision A 2 of § 3.1-336.2;*

6. *Is a cigarette manufacturer or importer that has imported any cigarette into the United States in violation of 19 U.S.C. § 1681a; or*

7. *Is a cigarette manufacturer or importer that has imported or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.).*

§ 58.1-1012. Duties of wholesale dealer on shipping, delivering or sending out cigarettes.

Every wholesale dealer in this Commonwealth shall, before shipping, delivering or sending out any cigarettes to any dealer in this Commonwealth or for sale in this Commonwealth, cause the same to have a *tax-exempt stamp* or the requisite denominations and amount of *tax* 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 this 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 this Commonwealth shall be required to carry out the provisions set out in this chapter for such sales or deliveries.

§ 58.1-1013. Penalty for failing to affix stamps; subsequent violations of article.

Any person within this Commonwealth who sells, stores or receives cigarettes for the purpose of distribution to another within this Commonwealth and fails to properly affix the required stamps to any cigarettes pursuant to the provisions of this chapter shall be required to pay as part of the tax imposed hereunder, *(including if the cigarettes are tax exempt)* a penalty of ~~twenty-five dollars~~ *not more than \$1,000*, to be assessed and collected by the Department as other taxes and penalties are collected, *or shall be imprisoned not more than 1 year, or both*. Where willful intent exists to defraud the Commonwealth of the tax levied under this chapter, such person shall be required to pay a penalty of ~~\$250~~ *\$10,000 or 5 times the retail value of the cigarettes involved for which no stamps are affixed, whichever is greater, or shall be imprisoned not more than 5 years or both*. It shall be prima facie evidence of intent to defraud when the number of such unstamped cigarettes exceeds thirty packs.

Each pack of cigarettes not having proper stamps affixed thereto as herein required shall be deemed a separate offense. Any cigarettes in the place of business of any person required by the provisions of this chapter to stamp the same shall be prima facie evidence that they are intended for sale.

Any person who has been found guilty of violating any of the provisions of this article ~~and who, after may, in addition to being punished by fine, penalty, assessment or imprisonment, is guilty of a second or subsequent violation of this chapter shall, upon being found guilty of such second offense,~~ have his or its permit revoked by the Department, and no further permit shall be issued or granted to such person for a period of one year from the date the permit has been revoked.

§ 58.1-1014. Permits required for transporting or distributing cigarettes.

Any person who transports or distributes cigarettes in any manner whatsoever within this Commonwealth who has not a permit issued under this chapter, shall, before transporting or distributing any of such tobacco products as enumerated and defined herein, secure a permit from the Department or be granted a waiver therefrom when the Commissioner is of the opinion that such permit is unnecessary. The Department shall, before issuing or waiving any such permit, ascertain from the applicant the nature of his business and the names of each county and city to which the applicant desires to transport or distribute cigarettes. A permit when so issued shall be conspicuously displayed on the vehicle for which it is issued. Failure to properly display the permit as required shall be deemed a violation of this section. Any person having been issued a permit who engages in any practices which are deemed by the Department to be injurious to the collection of the tax provided herein may have his permit revoked by the Department and no further permit shall be issued for six months and not then unless the Department is satisfied it is advisable. Duplicate permit cards will be issued to replace permits lost or damaged upon application. Any person found transporting or distributing cigarettes without first securing a permit as required above shall be guilty of a Class 42 misdemeanor.

Any person who ships unstamped cigarettes into the Commonwealth other than to a wholesale dealer or retail dealer licensed by the Commonwealth under § 58.1-1011 shall first file with the Department notice of such shipment. Any person transporting unstamped cigarettes into or within the Commonwealth shall carry, in the vehicle used to convey the shipment, invoices or equivalent documentation for all cigarettes in the shipment. The invoices or documentation shall show the true name and address of the

consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of cigarettes so transported. The notice and documentation requirements shall not apply to any common or contract carrier that is transporting cigarettes through the Commonwealth to another state under a proper bill of lading or freight bill, which states the quantity, source, and destination of such cigarettes.

§ 58.1-1015. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps.

Whoever removes or otherwise prepares any Virginia revenue stamp with intent to use, or cause the same to be used, after it has already been used, or buys, sells, offers for sale, or gives away any such washed or removed or restored stamps to any person for using or who used the same, or has in his possession any washed or restored or removed or altered stamp which has been removed from the article to which it has been previously affixed, or whoever for the purpose of indicating the payment of any tax hereunder, or tax-exempt status, reuses any stamp which has heretofore been used for the purpose of paying any tax provided in this article, or indicating the tax-exempt status of cigarettes, or whoever manufactures, buys, sells, offers for sale, or has in his possession any reproduction or counterfeit of the Virginia revenue stamps provided for in this article, or whoever sells any Virginia revenue stamps not affixed to taxable or tax-exempt cigarettes shall be guilty of a Class 5 felony subject to the punishment provided for in this section.

Notwithstanding any other provision of law, the sale or possession of cigarettes by any person, including a manufacturer, wholesaler dealer, or retailer dealer (i) affixed with a reproduction or counterfeit of Virginia revenue stamps or (ii) which are counterfeit cigarettes, shall result in the seizure of such cigarettes, stamps, and related machinery by the Department or any law-enforcement officer of the Commonwealth and shall be punishable as follows:

1. A first violation with a total quantity of less than 2 cartons of cigarettes shall be punishable by a fine of \$1,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both.

2. A subsequent violation with a total quantity of less than 2 cartons of cigarettes shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both the fine and the imprisonment, and shall also result in the revocation by the Department of the manufacturer, wholesaler dealer, or retailer dealer license.

3. A first violation with a total quantity of 2 or more cartons of cigarettes shall be punishable by a fine of \$2,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both.

4. A subsequent violation with a total quantity of 2 or more cartons of cigarettes shall be punishable by a fine of \$50,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed 5 years, or both, and shall also result in the revocation by the Department of the manufacturer, wholesaler dealer, or retail dealer license.

For purposes of this section, counterfeit cigarettes include cigarettes that have false manufacturing labels or are affixed without stamps or a combination thereof. Any counterfeit cigarette seized shall be destroyed.

§ 58.1-1015.1. Seizure, forfeiture and destruction.

Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the Commonwealth in violation of this chapter shall be deemed contraband and shall be forfeited to the Commonwealth and destroyed. Such cigarettes shall be deemed contraband whether or not the violation of this chapter is with knowledge. All fixtures, equipment, and all other materials and personal property on the premises of any wholesale dealer or retail dealer who, with intent to defraud the Commonwealth, (i) fails to keep or make any record, return, report, or inventory; (ii) keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter; or (iii) attempts in any manner to evade the requirements of this chapter shall be forfeited to the Commonwealth.

§ 58.1-1016. Administration and enforcement of tax.

The Department shall administer and enforce the tax imposed by this article. It shall have the power to enter upon the premises of any person and to examine, or cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records, invoices, or memoranda, etc., bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this chapter.

In any case where a law-enforcement officer of the Commonwealth has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this chapter, such officer shall be authorized to stop such vehicle and to inspect the same for contraband cigarettes.

Any person who knowingly omits, neglects, or refuses to comply with the provisions of this chapter, or does, or causes to be done, any of the things prohibited by this chapter, shall, in addition to any other penalty provided in this chapter, be assessed with a penalty of \$1,000, or 5 times the retail value

of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

§ 58.1-1017. Sale, purchase, possession, etc., of cigarettes for purpose of evading tax.

It shall be unlawful for any person, except as otherwise provided by law, to sell, purchase, transport, receive or possess cigarettes unless the same have been stamped in the manner required by law, for the purpose of evading the payment of the taxes on such products. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

Any person who fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this chapter, be assessed with a penalty of 5 times the retail value of the cigarettes involved.

If a person who is not a regularly licensed dealer as provided in § 58.1-1011 has in his possession within the Commonwealth more than thirty packages of unstamped cigarettes, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon.

Any person who, with a willful intent to defraud the Commonwealth:

1. Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder;

2. Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

3. Fails to comply with any requirement of this chapter shall, for each such offense, be fined \$10,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than 5 years, or both.

Any person who violates any provision of this chapter, or of regulations prescribed hereunder, (i) without a willful intent to defraud the Commonwealth or (ii) by the sale or possession of counterfeit cigarettes shall, for each such offense, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

§ 58.1-1034. Records to be kept; filing with Department.

A. Any person who acquires, holds, owns, possesses, transports in or imports into the Commonwealth cigarettes which are subject to this chapter shall, with respect to such cigarettes, maintain and keep all records required pursuant to Chapter 10 (§ 58.1-1000 et seq.) of this title.

B. Between the first and tenth business day of each month, each ~~person~~ *wholesale dealer or retail dealer* licensed to affix ~~the state tax stamp~~ *stamps* to cigarettes shall file with the Department, for all cigarettes imported into the United States to which such person has affixed the tax stamp *or tax-exempt stamp* in the preceding month, (i) a copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes, and the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms; (ii) a statement, signed by such person under the penalty of perjury, which shall be treated as confidential by the Department and shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; however, if such licensed person has already provided to the Department the identical information required by this clause as part of its monthly reporting required by Chapter 10 (§ 58.1-1000 et seq.) of this title, then such monthly reporting shall be deemed to have also been made simultaneously under the provisions of this clause, and duplicate copies need not be provided to the Department; and (iii) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with respect to such cigarettes and §§ 3.1-336.1 and 3.1-336.2 of the Code of Virginia, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of § 3.1-336.1.

§ 58.1-1035. Revocation or suspension of permit by Department; civil penalties; sharing of information.

A. The Department may revoke or suspend the permit of any *manufacturer*, wholesale dealer, or *retail dealer* as defined in § 58.1-1000, for a violation of this chapter or any rule adopted by the Department as provided in § 58.1-1011.

B. In addition, the Department may impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000 upon finding a violation of this chapter and may assess the tax due and any interest on the product acquired, possessed, sold, or offered for sale in violation of this chapter.

C. For the purpose of enforcing this chapter, the Department may request or share information with any federal, state or local agency, including any agency of another state or local agency thereof.

§ 58.1-1037. Seizure.

Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the Commonwealth in violation of this chapter shall be deemed contraband and shall be subject to seizure, forfeiture and destruction seized, forfeited, and destroyed. Such cigarettes shall be deemed contraband whether or not the violation of this chapter is with knowledge.

ARTICLE 4.

Delivery Sale Requirements.

§ 58.1-1022.1. Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchase age.

"Consumer" means an individual who is not licensed as a wholesale dealer or retail dealer pursuant to § 58.1-1011.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or of a delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the Commonwealth.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Department" means the Department of Taxation.

"Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Office.

"Person" means the same as that term is defined in § 1-13.19.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ 58.1-1022.2. Requirements for delivery sales.

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the Commonwealth.

B. Each person accepting a purchase order for a delivery sale shall comply with:

1. The age verification requirements set forth in § 58.1-1022.3;

2. The disclosure requirements set forth in § 58.1-1022.4;

3. The shipping requirements set forth in § 58.1-1022.5;

4. The registration and reporting requirements set forth in § 58.1-1022.6;

5. The tax collection requirements set forth in § 58.1-1022.7; and

6. All other laws of the Commonwealth generally applicable to sales of cigarettes that occur entirely within the Commonwealth, including, but not limited to, those laws imposing: (i) excise taxes, (ii) sales taxes, (iii) license and revenue-stamping requirement, and (iv) escrow or other payment obligations.

§ 58.1-1022.3. Age verification requirements.

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless before mailing, shipping, or delivering such cigarettes such person:

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age, and (ii) a statement signed by the prospective consumer in writing and under penalty of perjury that certifies the prospective consumer's address and date of birth. Such statement shall also confirm (a) that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that sales of cigarettes to individuals under the legal minimum purchase age are illegal, and (c) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

2. Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subsection A against a federal database established for such purpose if one exists, or a commercially available database;

3. Sends to the prospective consumer, via e-mail or other means, a notice that meets the requirements of § 58.1-1022.4 and requests confirmation that the purchase order for a delivery sale was placed by the prospective consumer;

4. Receives from the prospective consumer confirmation, pursuant to the request described in subsection C, that such consumer placed the purchase order for a delivery sale; and

5. Receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

§ 58.1-1022.4. Disclosure requirements.

The notice required under subdivision A 3 of § 58.1-1022.3 shall include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;

2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) rotated on a quarterly basis;

3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with § 58.1-1022.3; and

4. A prominent and clearly legible statement that cigarette sales are subject to tax under § 58.1-1001, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

§ 58.1-1022.5. Shipping requirements.

A. Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

1. Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

2. Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require (i) the consumer placing the purchase order for the delivery sale, or an adult designated by such consumer, to sign to accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that (a) he is either the addressee or the adult designated by the addressee and (b) such individual is at least the legal minimum purchase age. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 27 years of age; and

3. Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with § 58.1-1022.7.

B. A delivery service shall be in violation of this article if it (i) ships or otherwise delivers cigarettes in connection with a delivery sale without first receiving evidence of compliance with § 58.1-1022.7 or (ii) fails to comply with the requirements described in subdivision A 2 or described in § 58.1-1022.6:

1. When obligated to do so under a method of shipping or delivery;

2. When delivering any container pursuant to shipping documents containing the statement described in subdivision A 1; or

3. When delivering any container that such delivery service otherwise has reason to know contains cigarettes.

C. If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this article applicable to a delivery service and shall be in violation of the provisions of this article if he fails to comply with any such requirement.

§ 58.1-1022.6. Registration and reporting requirements.

A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the Department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the Department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

1. The name and address of the consumer to whom such delivery sale was made;

2. The brand or brands of the cigarettes that were sold in such delivery sale; and

3. The quantity of cigarettes that were sold in such delivery sale.

§ 58.1-1022.7. Collection of taxes.

Each person accepting a purchase order for a delivery sale shall collect and remit to the Department all cigarette taxes imposed by the Commonwealth with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the Commonwealth.

§ 58.1-1022.8. Penalties.

A. Except as otherwise provided in this section, a first violation of any provision of this chapter shall be punishable by a fine of \$1,000 or 5 times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of this article shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater.

797 B. Any person who knowingly violates any provision of this article, or who knowingly and falsely
798 submits a certification under subdivision A 1 of § 58.1-1022.3 in another person's name, shall, for each
799 such offense, be fined \$10,000 or 5 times the retail value of the cigarettes involved, whichever is
800 greater, or imprisoned not more than 5 years, or both.

801 C. Any person failing to collect or remit to the Department any tax required in connection with a
802 delivery sale shall be assessed, in addition to any other penalty, a penalty of 5 times the retail value of
803 the cigarettes involved.

804 D. Forfeiture.

805 1. Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of
806 this article shall be forfeited to the Commonwealth and destroyed.

807 2. All fixtures, equipment, and all other materials and personal property on the premises of any
808 person who, with the intent to defraud the Commonwealth, violates any of the requirements of this
809 article, shall be forfeited to the Commonwealth.

810 § 58.1-1022.9. Enforcement.

811 The Attorney General or his designee, or any person who holds a valid permit under 26 U.S.C.
812 § 5712, may bring an action in the appropriate court in the Commonwealth to prevent or restrain
813 violations of this article by any person (or any person controlling such person).

814 **2. That for the year 2003, the first report of stamping agents required by subsection A of**
815 **§ 3.1-336.7 shall be due August 1, 2003, and the certifications by a tobacco product manufacturer**
816 **described in subsection A of § 3.1-336.4 shall be due September 15, 2003.**

817 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
818 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
819 **be determined for periods of imprisonment in state adult correctional facilities and \$0 for periods**
820 **of commitment to the custody of the Department of Juvenile Justice. #**