



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 956

(Patron – Stosch)

Date Submitted: 01/03/03

LD #: 03-9049540

Topic: Sales of cigarettes

Proposed Change:

This proposal amends §§ 58.1-1000, 58.1-1003, 58.1-1006 through 58.1-1017, 58.1-1034, 58.1-10.5 and 58.1-1037 and adds §§ 3.1-336.3 through 3.1-336.16, 58.1-1015.1, and 58.1-1022.1 through 58.1-1022.9. This proposal addresses the sales of cigarettes including requirements for tobacco product manufacturers, a directory of cigarettes requirements, tax- stamp requirements and procedures, documentation and reporting requirements, regulatory procedures, civil penalties and remedies, and criminal penalties. Ten misdemeanor crimes, two special class crimes, and nine felony crimes are involved in this proposal. One of the crimes would remain unchanged, twelve would be amended, and there would be eight new crimes added. The criminal aspects of this crime are as follows:

- Under § 3.1-336.3, it would become a Class 2 misdemeanor, punishable by up to six months incarceration to (1) sell or distribute cigarettes or (2) acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes that the person knows, or should have known, are intended for distribution or sale in violation of § 3.1-336.6 (prohibition against stamping or sale or import of cigarettes not in the Directory).
- Although it is currently a Class 1 misdemeanor, punishable by up to 12 months incarceration, for any wholesaler or retailer to fail or refuse to comply with any of the provisions of § 58.1-1003, under the proposal, it would be a Class 2 misdemeanor, punishable by up to six months incarceration. The provisions under § 58.1-1003 have changed so that only wholesale dealers and retailer dealers qualified under § 58.1-1011 may apply for stamps and stamps may only be applied to cigarette packages received directly from a manufacturer or wholesale dealer with a valid and current permit. Also, requirements for stamps and procedures are defined.
- It would remain a Class 1 misdemeanor for any person to fail or refuse to keep and preserve the records required or to allow audit or inspection of records by the Department of Taxation. However, § 58.1-1007 has changed to add importers to those covered under these requirements, exempt retail transactions of 1,000 cigarettes or less, require records be preserved on the premises, add requirements of record details, and grant access to such records and reports to the Tax Commissioner and the United States Secretary of the Treasury or their representatives.
- Retail dealers would be added to wholesalers under the proposed amendment to § 58.1-1008 making the failure or refusal to file the report required by this section in a timely manner a Class 2 misdemeanor, punishable by up to six months incarceration. The proposal also would change this section by detailing and amending certain reporting requirements.
- Although the criminal provisions under § 58.1-1008.1 would remain a Class 2 misdemeanor, punishable by up to six months incarceration, the civil penalties would be reduced from a maximum of

\$5,000 to a maximum of \$1,000. Current criminal provisions under this section include a manufacturer failing or refusing to file a report with the Department of Taxation and a manufacturer refusing audit or inspection of records by the Department of Taxation. Under the proposal, only manufacturers shipping cigarettes into or within the Commonwealth would be required to file such reporters.

- The crimes under § 58.1-1009 would be altered by adding tax-exempt stamp requirements. The proposal also specifies that wholesale dealers and retail dealers shall not sell or provide stamps to any other wholesale dealer or person. Crimes under this statute include the unlawful sale of cigarette revenue stamps and revenue stamps not purchased from the Department of Taxation.
- Similarly, violation of § 58.1-1010, dealing with the sale of unstamped and tax-exempt stamped cigarettes by wholesale dealers, a Class 2 misdemeanor punishable by up to six months incarceration, would be amended by adding tax exempt stamps requirements.
- Two new crimes are proposed under § 58.1-1013. Sales, storage or receiving cigarettes for the purpose of distribution to another within this Commonwealth with the failure to properly affix the required stamps to any cigarettes pursuant to the provisions in this chapter will go from being punishable by a \$25 civil penalty to being punishable by a fine of up to \$1,000 and incarceration up to one year. Also, the willful intent to defraud the Commonwealth of tax levied under this chapter would go from being punishable by a \$250 civil penalty to being punishable by a fine of up to \$10,000 or five times the retail value of the cigarettes involved, whichever is greater, and/or, up to five years incarceration.
- Under § 58.1-1014, the current Class 1 misdemeanor of transporting or distributing cigarettes without first securing a permit as required would be reduced to a Class 2 misdemeanor.
- The removal, reuse, unauthorized sale, etc., of stamps and counterfeit stamps, which is currently a Class 5 felony, punishable by one to ten years incarceration, under § 58.1-1015, would be split into four separate crimes, depending on the amount of cigarettes involved and prior violations. Each of these crimes would be a felony, punishable by up to five years incarceration. A second or subsequent violation of this type would increase the fine limit to \$5,000 or five times retail the retail value, which ever is greater. A first violation involving two or more cartons of cigarettes would be eligible for a fine of \$2,000 or five times retail the retail value, which ever is greater. A second or subsequent violation of this type would increase the fine limit to \$50,000 or five times retail the retail value, which ever is greater.
- Violations of § 58.1-1017 would remain a Class 2 misdemeanor under this proposal. However, two new offenses are also defined. The crime of violation of § 58.1-1017 without willful intent to defraud or by sale or possession of counterfeit cigarettes would be punishable by a fine of up to \$1,000 and up to one year incarceration. On the other hand, with the willful intent to defraud the Commonwealth, failure to keep or make any record, return, report, or inventory or keeps or inventory, required or 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 failure to comply with any requirement of this chapter, would be a Class 9 felony, punishable by a fine of up to \$10,000 or five times the retail value and up to five years incarceration.
- Three new crime are proposed in § 58.1-1022.8. A first violation of any provision of the chapter would be a Class 3 misdemeanor, punishable by a fine of \$1,000 or five times the retail value, which ever is higher. These provisions include delivery of sale requirements, age verification requirements, disclosure requirements, shipping requirements, registration and reporting requirements, and the

collection of taxes. A second or subsequent offense would be a Class 3 misdemeanor, punishable by \$5,000 or five times the retail value, whichever is higher. On the other hand, to knowingly violate any provision of this article or to knowingly and falsely submit certification in another person's name would be a felony, punishable by a fine of \$10,000 or five times the retail value, whichever is higher, and/or incarceration for a period of up to five years.

Convictions under the proposed legislation are not currently covered by the guidelines as the primary, or most serious, offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Current Practice:

The current *Code of Virginia* includes versions of 11 of the crimes in the proposal. These crimes include failure of a wholesaler to file report on purchases, failure or refusal of a manufacturer to file report with Department of Taxation (added 7/1/2002), refusal of a manufacturer of audit or inspection of records (added 7/1/2002), unlawful sale of cigarettes revenue stamps, revenue stamps not purchased from the Department of Taxation (added 7/1/2002), removal or reuse of counterfeit cigarette stamps, and purchase or possession of cigarettes without stamp. However, according to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data and FY2001 and FY2002 Local Inmate Data System (LIDS) data, there were no convictions for any of these offenses.

Impact of Proposed Legislation:

The proposed legislation may have an impact on state-responsible (prison) beds. However, the direction of that impact, if any, is not determinable through existing criminal justice data bases. There are several new crimes defined in the proposal that could result in increased incarceration. There is a new misdemeanor under § 3.1-336.10, two new special class crimes punishable by up to one year incarceration under §§ 58.1-1013 and 58.1-1017, and three new felonies under §§ 58.1-1013, 58.1-1017, and 58.1-1022.8. In addition, there are two new misdemeanors that could result in fines but no incarceration under § 58.1-1022.8. On the other hand, there are three crimes that could result in less incarceration time. Under §§ 58.1-1003 and 58.1-1014, an existing Class 1 misdemeanor is reduced to a Class 2 misdemeanor and under § 58.1-1015, a Class 5 felony is reduced to a felony with a 5-year maximum penalty. Other proposed changes may result in an impact because of changes in regulations upon which these crimes are based. There is also the possibility of a reduction in fines collected under § 58.1008.1. Nevertheless, criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal. Therefore, the magnitude of any impact cannot be computed from existing data sources. Similarly, the impact on jails and community corrections cannot be quantified.

No adjustment to the sentencing guidelines would be necessary under the proposal.

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 and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.