



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 956

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Stosch)

Date Submitted: 02/03/03

LD #: 03-1841540

Topic: Sales of cigarettes

Proposed Change:

This proposal amends §58.1-1015 and adds §§ 58.1-1022 through 58.1-1022.9. The removal or reuse of counterfeit cigarette stamps, delivery sale requirements, and penalties for violations thereof are addressed. The criminal aspects of this proposal are as follows:

- 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.
- Three new crimes 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, which ever 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, which ever 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 removal or reuse of counterfeit cigarette stamps under §58.1-1015. However, according to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were no convictions for this offense.

Impact of Proposed Legislation:

The proposed legislation may have an impact on state-responsible (prison) beds. Under 58.1-1022.8, there is a new felony punishable by up to five years incarceration and two new

misdeemeanors that could result in fines but no incarceration. 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.

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