



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 33

*(Patron – Hamilton)*

**Date Submitted:** 11/25/03

**LD #:** 04-1801316

**Topic:** Sales of cigarettes

#### **Proposed Change:**

This proposal amends §§ 58.1-1000 through 58.1-1008, 58.1-1009, 58.1-1010, 58.1-1012, 58.1-1013, 58.1-1014, 58.1-1017, 58.1-3830 and 58.1-3832 and repeals § 58.3831, to expand the applicability of these statutes from cigarettes to tobacco products. Tobacco products are defined in the proposal as cigarettes, cigars, chewing tobacco, smoking tobacco and snuff. In addition, the state tax on these products, collection of new tax funds, and limitations on local taxes on these products is also amended. However, this impact statement only addresses the criminal justice aspects of the proposal. Ten misdemeanor crimes and two felony crimes are affected by this proposal; in each case the crime is expanded from cigarettes, only to the more general definition of tobacco products. The following crimes are affected by this change:

- Failure or refusal to comply with any of the provisions of § 58.1-1003 - a Class 1 misdemeanor
- Fail to maintain sale and purchase records (§ 58.1-1003) – a Class 1 misdemeanor
- Fail to notify Commonwealth of receipt of out-of-state tobacco products (§ 58.1-1004) – a Class 2 misdemeanor
- Fail to maintain record of consignments/deliveries by carrier (§ 58.1-1005) – a Class 2 misdemeanor
- Fail to allow inspection by Department of Taxation (§ 58.1-1006) – a Class 2 misdemeanor
- Fail to maintain records subject to audit by Department of Taxation (§ 58.1-1007) – a Class 2 misdemeanor
- Wholesaler fails to file monthly report (§ 58.1-1008) – a Class 2 misdemeanor
- Unlawful sale of revenue stamps (§ 58.1-1009) – a Class 5 felony
- Revenue stamps not purchased from Department of Taxation (§ 58.1-1009) – a Class 5 felony
- Unlawful wholesale sale of tobacco products without Virginia revenue stamp (§ 58.1-1010) – a Class 2 misdemeanor
- Transport or distributes tobacco products without permit (§ 58.1-1014) – a Class 1 misdemeanor
- Unlawful sale of tobacco products without revenue stamps (§ 58.1-1017) – a Class 2 misdemeanor

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

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 all crimes in the proposal. Some of these crimes were recently enacted (2002 session of the General Assembly) including failure of a wholesaler to file a report on purchases, failure or refusal of a manufacturer to file a report with the Department of Taxation, refusal by a manufacturer to permit an audit or inspection of records, unlawful sale of cigarettes revenue stamps, revenue stamps not purchased from the Department of Taxation, removal or reuse of counterfeit cigarette stamps, and purchase or possession of cigarettes without stamp. Data is not yet available to determine the frequency of violations for these offenses. 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 earlier versions of these offenses.

**Impact of Proposed Legislation:**

The proposed legislation may have an impact on state-responsible (prison) beds. However, the extent of that impact, if any, cannot be determined with existing criminal justice databases. 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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