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**HOUSE BILL NO. 1277**

Offered January 11, 2006

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*A BILL to amend and reenact §§ 3.1-336.4, 3.1-336.8, and 58.1-3 of the Code of Virginia, relating to tobacco reports and documents filed with the Attorney General.*

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.1-336.4, 3.1-336.8, and 58.1-3 of the Code of Virginia are amended and reenacted as follows:**

§ 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 *Attorney General or* 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) that have been sold in the Commonwealth at any time during the current calendar year, (iii) indicating 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 Attorney General ~~and the Commissioner.~~

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

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

2. That such nonparticipating manufacturer has (i) established and continues to maintain a qualified escrow fund as that term is defined in Article 5 (§ 3.1-336.1 et seq.) of this chapter and (ii) executed a qualified escrow agreement that conforms to the requirements in Article 5 of this chapter;

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

4. The (i) name, address and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter; (ii) account number of such qualified escrow fund and subaccount number for the Commonwealth; (iii) amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the Commonwealth during the preceding calendar year, the date or dates and amount of each such deposit, and verification of those dates and amounts of deposits as may be deemed necessary by the Attorney General; and (iv) amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it has at any time made escrow payments pursuant to Article 5 of this chapter.

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

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59 for purposes of Article 5 of this chapter.

60 F. The tobacco product manufacturers shall maintain all invoices and documentation of sales and  
61 other such information relied upon for such certification for a period of five years, unless otherwise  
62 required by law to maintain them for a greater period of time.

63 § 3.1-336.8. Reporting of information.

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

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

78 § 58.1-3. Secrecy of information; penalties.

79 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax  
80 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or  
81 revenue officer or employee, or any person to whom tax information is divulged pursuant to  
82 § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge  
83 any information acquired by him in the performance of his duties with respect to the transactions,  
84 property, including personal property, income or business of any person, firm or corporation. Such  
85 prohibition specifically includes any copy of a federal return or federal return information required by  
86 Virginia law to be attached to or included in the Virginia return. *This prohibition shall apply to any*  
87 *reports, returns, financial documents or other information filed with the Attorney General pursuant to*  
88 *the provisions of Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1.* Any person violating the  
89 provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection  
90 shall not be applicable, however, to:

91 1. Matters required by law to be entered on any public assessment roll or book;

92 2. Acts performed or words spoken or published in the line of duty under the law;

93 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a  
94 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to  
95 its study, provided that any such information obtained shall be privileged;

96 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any  
97 information required for building permits;

98 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court  
99 pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

100 6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when  
101 requested by the General Assembly or any duly constituted committee of the General Assembly.

102 B. Nothing contained in this section shall be construed to prohibit the publication of statistics so  
103 classified as to prevent the identification of particular reports or returns and the items thereof or the  
104 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together  
105 with any relevant information which in the opinion of the Department may assist in the collection of  
106 such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing  
107 whether a person, firm or corporation is licensed to do business in that locality and divulging, upon  
108 written request, the name and address of any person, firm or corporation transacting business under a  
109 fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue  
110 is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner  
111 with information obtained from local tax returns and other information pertaining to the income, sales  
112 and property of any person, firm or corporation licensed to do business in that locality.

113 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax  
114 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director  
115 of finance or other similar collector of county, city or town taxes who, for the performance of his  
116 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the  
117 Commissioner of the Department of Social Services, upon written request, information on the amount of  
118 income reported by persons on their state income tax returns who have applied for public assistance or  
119 social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the  
120 designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names

and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Director of the Department of Charitable Gaming such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; and (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax

182 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties  
183 prescribed herein as though he were a tax official.

184 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the  
185 treasurer or other collector of taxes for a county, city or town is authorized to provide information  
186 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course  
187 of performing his duties to the commissioner of the revenue or other assessing official for such  
188 jurisdiction for use by such commissioner or other official in performing assessments.

189 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a  
190 motor vehicle local license decal the year, make, and model and any other legal identification  
191 information about the particular motor vehicle for which that local license decal is assigned.

192 E. Notwithstanding any other provisions of law, state agencies and any other administrative or  
193 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon  
194 written request, the name, address, and social security number of a taxpayer, necessary for the  
195 performance of the Commissioner's official duties regarding the administration and enforcement of laws  
196 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax  
197 Commissioner or his agent which may be deemed taxpayer information shall not relieve the  
198 Commissioner of the obligations under this section.

199 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published  
200 any confidential tax document which he knows or has reason to know is a confidential tax document. A  
201 confidential tax document is any correspondence, document, or tax return that is prohibited from being  
202 divulged by subsection A, B, C, or D of this section. This prohibition shall not apply if such  
203 confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing  
204 disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2  
205 misdemeanor.