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SENATE BILL NO. 545

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 2.2-3705.7, 3.1-336.4, 3.1-336.5, 3.1-336.7, 3.1-336.8, and 3.1-336.10 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.1-336.5:1, 3.1-336.7:1, 3.1-336.13:1, and 3.1-336.15:1, relating to the Master Settlement Agreement; regulation of cigarette manufacturers and stamping agents.

Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 3.1-336.4, 3.1-336.5, 3.1-336.7, 3.1-336.8, and 3.1-336.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.1-336.5:1, 3.1-336.7:1, 3.1-336.13:1, and 3.1-336.15:1 as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's

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own information shall not be denied.

9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an

individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30 or of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as "the retirement system") relating to:

a. Internal deliberations of or decisions by the retirement system on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. (Expires July 1, 2008) Information relating to the breed of the vaccinated animal, and any personal identifying information relating to the animal owner that is not made a part of the animal license application, contained in rabies vaccination certificates provided to local treasurers as required by

182 § 3.1-796.87:1.

183 28. *Records of the Office of the Attorney General acting pursuant to its enforcement authority under*
184 *Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1, to the extent*
185 *that such records contain reports, affidavits, correspondence, or other information submitted by a*
186 *private business entity or principal thereof to the Office of the Attorney General.*

187 § 3.1-336.4. Certifications.

188 A. Every tobacco product manufacturer whose cigarettes are sold in the Commonwealth whether
189 directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and
190 deliver on a form prescribed by the Attorney General, *requesting such information as the Attorney*
191 *General reasonably deems necessary to enable him to make the determinations required in § 3.1-336.5,*
192 *a certification to the Attorney General no later than the thirtieth day of April each year, certifying under*
193 *penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is*
194 *a participating manufacturer and has performed its financial obligations under the Master Settlement*
195 *Agreement or is in full compliance with Article 5 (§ 3.1-336.1 et seq.) of this chapter.*

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

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

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

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

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

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

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

225 5. *In the case of a nonparticipating manufacturer located outside of the United States, that it has*
226 *provided a declaration on a form prescribed by the Attorney General from each of its importers into the*
227 *United States of any of its brand families to be sold in Virginia that such importer accepts joint and*
228 *several liability with the nonparticipating manufacturer for all escrow deposits due in accordance with*
229 *§ 3.1-336.2, for all penalties assessed in accordance with § 3.1-336.2, and for payment of all costs and*
230 *attorney fees imposed in accordance with this article or Article 6 (§ 3.1-336.3 et seq.) of this chapter.*
231 *Such declaration shall appoint for the declarant a resident agent for service of process in Virginia in*
232 *accordance with subsection A of § 3.1-336.7.*

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

243 F. The tobacco product manufacturers shall maintain all invoices and documentation of sales and

other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

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

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

1. The Attorney General shall not include or retain in such Directory the name or brand families of any ~~nonparticipating~~ *participating manufacturer that fails to perform its financial responsibilities under the Master Settlement Agreement, or any tobacco product manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsections C and A through D of § 3.1-336.4, unless the Attorney General has determined that such violation has been cured to his satisfaction.*

2. Neither a tobacco product manufacturer nor brand family shall be included or retained in the Directory if the Attorney General concludes that (i) in the case of a nonparticipating manufacturer all escrow payments required pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter for any period for any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General, ~~or~~ (ii) all outstanding final judgments, including interest thereon, for violations of Article 5 of this chapter have not been fully satisfied for such brand family and such manufacturer, (iii) *by reason of the business plan, business history, trade connections, or compliance and payment history in Virginia or any other state of the tobacco product manufacturer, or the business history, trade connections or compliance and payment history in Virginia or any other state of any of the principles thereof, the tobacco product manufacturer fails to provide reasonable assurance that it will comply with the requirements of this article or of Article 5 (§ 3.1-336.1 et seq.) of this chapter, or (iv) the manufacturer has failed to disclose any material information required or made any material false statement in the certification of any supporting information or documentation provided.*

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

C. Notwithstanding the provisions of subsection A, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to Article 5 (§ 3.1-336.1 et seq.) of this chapter that has been approved by the Attorney General, the Attorney General may not remove such manufacturer or its brand families from the Directory unless the manufacturer has been given at least 30 days' notice of such intended action. For purposes of this section, notice shall be deemed sufficient if it is sent either electronically or by first-class mail to an electronic mail address or postal mailing address, as the case may be, provided by the manufacturer in its most recent certification filed pursuant to § 3.1-336.4. The notified nonparticipating manufacturer shall have 30 days from receipt of the notice to either come into compliance with the applicable requirements or, in the alternative, secure a temporary injunction against removal from the Directory. For purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the Directory may be deemed to constitute irreparable harm.

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

§ 3.1-336.5:1. *Bond requirement for newly qualified and elevated-risk nonparticipating manufacturers.*

A. *Notwithstanding any other provision of law, if a newly qualified nonparticipating manufacturer is to be listed in the Virginia Tobacco Directory (the Directory), or if the Attorney General reasonably determines that any nonparticipating manufacturer who has filed a certification pursuant to § 3.1-336.4 poses an elevated risk for noncompliance with this article or with Article 5 (§ 3.1-336.1 et seq.) of this chapter, neither such nonparticipating manufacturer nor any of its brand families shall be included in the Directory unless and until such nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with § 3.1-336.7:1, has posted a bond in accordance with this section.*

B. *The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of \$50,000 or the amount of escrow the manufacturer was required to deposit as a result of its previous calendar year's sales in Virginia. The bond shall be written in favor of the Commonwealth of Virginia and shall be conditioned on the performance by the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection A of § 3.1-336.2, of all of its duties and obligations under this article and Article 5 (§ 3.1-336.1 et seq.) of this chapter during the year in which*

305 *the certification is filed and the next succeeding calendar year.*

306 *C. A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with*
307 *this article or Article 5 (§ 3.1-336.1 et seq.) of this chapter if:*

308 *1. The nonparticipating manufacturer has underpaid an escrow obligation with respect to any state*
309 *at any time during the calendar year or within the past three calendar years except if (i) the*
310 *manufacturer did not make underpayment knowingly or recklessly and (ii) the manufacturer promptly*
311 *cured the underpayment upon notice of it, but in no event more than 180 days after the escrow was*
312 *due;*

313 *2. Any state has removed the manufacturer or its brand families from the state's tobacco directory*
314 *for noncompliance with the state law at any time during the calendar year in which the certification is*
315 *filed or within the past three calendar years; or*

316 *3. Any state has litigation pending against, or an unsatisfied judgment against, the manufacturer for*
317 *escrow or for penalties, costs, or attorney fees related to noncompliance with state escrow laws.*

318 *D. As used in this section "newly qualified nonparticipating manufacturer" means a nonparticipating*
319 *manufacturer that has not previously been listed in the Virginia Tobacco Directory. Such manufacturers*
320 *may be required to post a bond in accordance with this section for the first five years of their listing, or*
321 *longer if they have been determined to pose an elevated risk for noncompliance.*

322 *§ 3.1-336.7. Agent for service of process.*

323 *A. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in*
324 *the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to having*
325 *its brand families listed or retained in the Directory, appoint and continually engage without interruption*
326 *the services of an agent in the Commonwealth to act as agent for the service of process on whom all*
327 *process, and any action or proceeding against it concerning or arising out of the enforcement of this*
328 *article or Article 5 (§ 3.1-336.1 et seq.) of this chapter may be served in any manner authorized by law.*
329 *Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The*
330 *nonparticipating manufacturer shall provide the name, address, phone number and proof of the*
331 *appointment and availability of such agent to the satisfaction of the Commissioner and Attorney*
332 *General. Any nonparticipating manufacturer located outside of the United States shall, as an additional*
333 *condition precedent to having its brand families listed or retained in the Directory, cause each of its*
334 *importers into the United States of any of its brand families to be sold in Virginia to appoint and*
335 *continually engage without interruption the services of an agent in the Commonwealth in accordance*
336 *with the provisions of this section. All obligations of a nonparticipating manufacturer imposed by this*
337 *section with respect to appointment of its agent shall likewise apply to such importers with respect to*
338 *appointment of their agents.*

339 *B. The nonparticipating manufacturer shall provide notice to the Commissioner and Attorney General*
340 *30 calendar days prior to termination of the authority of an agent and shall further provide proof to the*
341 *satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days*
342 *prior to the termination of an existing agency appointment. In the event an agent terminates an agency*
343 *appointment, the nonparticipating manufacturer shall notify the Commissioner and Attorney General of*
344 *said termination within five calendar days and shall include proof to the satisfaction of the Attorney*
345 *General of the appointment of a new agent.*

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

352 *§ 3.1-336.7:1. Joint and Several Liability.*

353 *For each nonparticipating manufacturer located outside the United States, each importer into the*
354 *United States of any such nonparticipating manufacturer's brand families that are sold in Virginia shall*
355 *bear joint and several liability with such nonparticipating manufacturer for deposit of all escrow due*
356 *under § 3.1-336.2, payment of all penalties imposed in accordance with § 3.1-336.2, and payment of all*
357 *costs and attorney fees imposed in accordance with this article or Article 6 (§ 3.1-336.3 et seq.) of this*
358 *chapter.*

359 *§ 3.1-336.8. Reporting of information.*

360 *A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed*
361 *by the Commissioner, each stamping agent shall submit to the Attorney General such information as the*
362 *Attorney General requires to facilitate compliance with this article, including, but not limited to, a list by*
363 *brand family of the total number of cigarettes for which the stamping agent affixed stamps during the*
364 *previous calendar quarter or otherwise paid the tax due for such cigarettes. For roll-your-own tobacco, in*
365 *lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent submit*
366 *the total quantity in ounces, by brand family, of all such roll-your-own tobacco in accordance with the*

invoice accompanying each shipment he initiates, as provided in subsection D of § 58.1-1003.2, or for which the stamping agent otherwise paid the tax due for such roll-your-own tobacco. 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 Attorney General for a period of five years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the 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 *has complied*, is in compliance, *and will continue in compliance* with this article *and Article 5 (§ 3.1-336.1 et seq.) of this chapter*.

C. On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the Attorney General pursuant to subsection A, provided that such information provided by the stamping agent to a tobacco manufacturer shall be limited to the brand families of that manufacturer as listed in the Directory established pursuant to § 3.1-336.5. A stamping agent receiving a request pursuant to this subsection shall provide the requested information within 30 days from receipt of the request.

§ 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 purchase tax stamps at a discounted rate. 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 listed in 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 procedures contained in § 4.1-338, which shall apply *mutatis mutandis*; except that all such cigarettes so confiscated and forfeited shall be destroyed and not resold.

C. The Attorney General, ~~on behalf of the Commissioner,~~ may seek an injunction to restrain a threatened or actual violation of § 3.1-336.6, subsection A of § 3.1-336.8, subsection B of § 3.1-336.8, or subsection C of § 3.1-336.8 by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action and reasonable attorneys' fees.

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

§ 3.1-336.13:1. Authority of Attorney General; audit and investigation.

The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of (i) tobacco product manufacturers as defined in § 3.1-336.1, (ii) exclusive distributors, retail dealers, stamping agents, and wholesale dealers, as defined in § 58.1-1000, and (iii) persons or entities engaged in delivery sales as defined in § 18.2-246.6; and

2. Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth, as now provided by law, and to compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person in attendance before the Attorney General or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a document or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order returnable in no less than two nor more than five days, directing such person to show cause why he should not produce such records. Upon the hearing of such, if the court shall determine that such person, without reasonable cause has refused to be examined or to answer legal or pertinent questions, or to produce a book or paper, the court may assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order,

428 *the court may take such orders as are provided for in the Rules of the Supreme Court of Virginia.*
429 *Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit*
430 *courts of the Commonwealth.*

431 *§ 3.1-336.15:1. Prima facie evidence.*

432 *In any action under subsection C of § 3.1-336.2, reports of numbers of cigarettes stamped submitted*
433 *to the Attorney General pursuant to subsection A of § 3.1-336.8 shall be admissible in evidence and*
434 *shall be deemed to constitute prima facie evidence of units sold during the time period for which such*
435 *reports were made.*