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SENATE BILL NO. 545

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 6, 2008)

(Patron Prior to Substitute—Senator Hurt)

A BILL to amend and reenact §§ 2.2-3705.3, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.3, 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:

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

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. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Charitable Gaming, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be

60 released only with the consent of the subject person. Local governing bodies shall adopt guidelines to
61 govern the disclosure required by this subdivision.

62 8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence
63 received or maintained by the Office or its agents in connection with specific complaints or
64 investigations, and records of communications between employees and agents of the Office and its
65 clients or prospective clients concerning specific complaints, investigations or cases. Upon the
66 conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may
67 not at any time release the identity of any complainant or person with mental illness, mental retardation,
68 developmental disabilities or other disability, unless (i) such complainant or person or his legal
69 representative consents in writing to such identification or (ii) such identification is required by court
70 order.

71 9. Information furnished in confidence to the Department of Employment Dispute Resolution with
72 respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title,
73 and memoranda, correspondence and other records resulting from any such investigation, consultation or
74 mediation. However, nothing in this section shall prohibit the distribution of information taken from
75 inactive reports in a form that does not reveal the identity of the parties involved or other persons
76 supplying information.

77 10. The names, addresses and telephone numbers of complainants furnished in confidence with
78 respect to an investigation of individual zoning enforcement complaints made to a local governing body.

79 11. Records of active investigations being conducted by the Department of Criminal Justice Services
80 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.)
81 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

82 12. Records furnished to or prepared by the Board of Education pursuant to subsection D of
83 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
84 unauthorized alteration, or improper administration of tests by local school board employees responsible
85 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
86 of records to (i) a local school board or division superintendent for the purpose of permitting such board
87 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
88 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
89 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
90 does not compromise the security of any test mandated by the Board.

91 13. *Records, notes and information provided in confidence and related to an investigation by the*
92 *Attorney General under Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of*
93 *Title 3.1, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,*
94 *or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that*
95 *has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is*
96 *not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,*
97 *persons supplying information, witnesses or other individuals involved in the investigation.*

98 § 3.1-336.4. Certifications.

99 A. Every tobacco product manufacturer whose cigarettes are sold in the Commonwealth whether
100 directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and
101 deliver on a form prescribed by the Attorney General, *requesting such information as the Attorney*
102 *General deems reasonably necessary to enable him to make the determinations required in § 3.1-336.5,*
103 a certification to the Attorney General no later than the thirtieth day of April each year, certifying under
104 penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: (i)
105 is a participating manufacturer *and has made all payments calculated by the independent auditor to be*
106 *due from it under the Master Settlement Agreement, except to the extent it is disputing any of such*
107 *payments;* or (ii) is in full compliance with Article 5 (§ 3.1-336.1 et seq.) of this chapter.

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

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

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

121 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; ~~and~~

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

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 for purposes of Article 5 of this chapter.

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 (i) ~~any nonparticipating~~ *participating manufacturer that fails to provide the required certification or to make a payment calculated by the independent auditor to be due from it under the Master Settlement Agreement except to the extent that it is disputing such payment, or* (ii) ~~any nonparticipating~~ *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~~ *any* 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) *in the case of a nonparticipating manufacturer or a tobacco product manufacturer that became a participating manufacturer after the Master Settlement Agreement execution date, as defined by section II (aa) of the Master Settlement Agreement, by reason of the business plan, business history, trade connections, or compliance and payment history under the Master Settlement Agreement or in Virginia or any other state, or the business history, trade connections or compliance and payment history under the Master Settlement Agreement or in Virginia or any other state of any of the principals thereof, the nonparticipating manufacturer or such tobacco product manufacturer fails to provide reasonable*

183 assurance that it will comply with the requirements of this article or of Article 5 (§ 3.1-336.1 et seq.) of
184 this chapter, or (iv) the manufacturer has knowingly failed to disclose any material information required
185 or knowingly made any material false statement in the certification of any supporting information or
186 documentation provided.

187 As used in this subdivision, reasonable assurances may include information and documentation
188 establishing to the satisfaction of the Attorney General that a failure to pay in Virginia or elsewhere
189 was the result of a good faith dispute over the payment obligation.

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

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

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

208 § 3.1-336.5:1. Bond requirement for newly qualified and elevated-risk nonparticipating
209 manufacturers.

210 A. Notwithstanding any other provision of law, if a newly qualified nonparticipating manufacturer is
211 to be listed in the Virginia Tobacco Directory (the Directory), or if the Attorney General reasonably
212 determines that any nonparticipating manufacturer who has filed a certification pursuant to § 3.1-336.4
213 poses an elevated risk for noncompliance with this article or with Article 5 (§ 3.1-336.1 et seq.) of this
214 chapter, neither such nonparticipating manufacturer nor any of its brand families shall be included in
215 the Directory unless and until such nonparticipating manufacturer, or its United States importer that
216 undertakes joint and several liability for the manufacturer's performance in accordance with
217 § 3.1-336.7:1, has posted a bond in accordance with this section.

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

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

228 1. The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation
229 with respect to any state at any time during the calendar year or within the past three calendar years
230 unless (i) the manufacturer did not make underpayment knowingly or recklessly and the manufacturer
231 promptly cured the underpayment within 180 days of notice of it, or (ii) the underpayment or lack of
232 payment is the subject of a good faith dispute as documented to the satisfaction of the Attorney General
233 and the underpayment is cured within 180 days of entry of a final order establishing the amount of the
234 required escrow payment;

235 2. Any state has removed the manufacturer or its brands or brand families or an affiliate or any of
236 the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the
237 state law at any time during the calendar year or within the past three calendar years; or

238 3. Any state has litigation pending against, or an unsatisfied judgment against, the manufacturer or
239 any affiliate thereof for escrow or for penalties, costs, or attorney fees related to noncompliance with
240 state escrow laws.

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

§ 3.1-336.7. Agent for service of process.

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

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

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

§ 3.1-336.7:1. Joint and several liability.

For each nonparticipating manufacturer located outside the United States, each importer into the United States of any such nonparticipating manufacturer's brand families that are sold in Virginia shall bear joint and several liability with such nonparticipating manufacturer for deposit of all escrow due under § 3.1-336.2, payment of all penalties imposed in accordance with § 3.1-336.2, and payment of all costs and attorney fees imposed in accordance with this article.

§ 3.1-336.8. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit to the Attorney General such information as the Attorney General requires to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. For roll-your-own tobacco, in lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent submit 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) a nonparticipating manufacturer and its importers or a tobacco product manufacturer as defined in § 3.1-336.1 that became a participating manufacturer after the Master Settlement execution date, as defined at section II (aa) of the Master Settlement Agreement, and its importers, (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. Upon reasonable cause to believe that a violation of this article or of Article 5 (§ 3.1-336.1 et seq.) of this chapter, or of Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1, or Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 has occurred or is reasonably likely to occur, 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 compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person refuses, without good 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 or located, 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 be examined, answer a legal or pertinent question or produce a document, record or other evidence. Upon the hearing of such, if the court determines that such person, without good cause, has refused to be examined or to answer legal or pertinent questions, or to produce a document, record or other evidence, the court may order compliance with the subpoena and 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, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of the Commonwealth.

§ 3.1-336.15:1. Presumption.

In any action under subsection C of § 3.1-336.2, reports of numbers of cigarettes stamped submitted to the Attorney General pursuant to subsection A of § 3.1-336.8 shall be admissible in evidence and shall be presumed to accurately state the number of cigarettes stamped during the time period by the stamping agent that submitted the report absent a contrary showing by the nonparticipating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the Commonwealth's right to maintain that such reports are incorrect or do not accurately reflect a nonparticipating manufacturer's sales in the Commonwealth during the time period in question, and the presumption shall not apply in the event the Commonwealth does so maintain.