

# VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

## CHAPTER 608

*An Act to amend and reenact § 3.2-4209.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-3.2:1, relating to certain state agencies sharing or disclosing information regarding nonparticipating tobacco product manufacturers.*

[H 1605]

Approved March 30, 2018

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

**1. That § 3.2-4209.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-3.2:1 as follows:**

**§ 3.2-4209.1. Additional information required; penalty.**

A. When used in this section, the term "applicable returns" means the following returns or reports relating to cigarettes that are filed or required to be filed with the Alcohol and Tobacco Tax and Trade Bureau, ~~United States~~ U.S. Department of the Treasury, after the effective date of this section; Alcohol and Tobacco Tax and Trade Bureau Form 5000.24, Alcohol and Tobacco Tax and Trade Bureau Form 5210.5 and Alcohol and Tobacco Tax and Trade Bureau Form 5220.6 as well as any successor returns or reports intended to replace ~~Forms~~ Form 5000.24, 5210.5, or 5220.6.

B. As a condition of selling cigarettes in the Commonwealth, every tobacco product manufacturer, as defined in § 3.2-4200, whose cigarettes are to be sold in the Commonwealth whether directly or through a distributor, importer, retailer, or similar intermediary or intermediaries shall, at the election of such tobacco product manufacturer, either:

(1) ~~submit~~ 1. Submit to the Attorney General a true and correct copy of each and every applicable return of such tobacco product manufacturer; or

(2) ~~submit~~ 2. Submit to the United States Treasury a request or consent under Internal Revenue Code section 6103 (c) authorizing the Alcohol and Tobacco Tax and Trade Bureau to disclose the applicable returns of such manufacturer to the Attorney General.

A foreign tobacco product manufacturer whose cigarettes are imported into the United States by an importer or importers shall submit, or shall cause each of its importers to submit, to the Attorney General each and every applicable return that includes any information about cigarettes of that foreign tobacco product manufacturer imported into the United States.

The Attorney General shall not disclose any applicable returns or any information contained therein, except as provided in subsection C or under § 58.1-3.2:1, notwithstanding any statute of this state that otherwise authorizes or requires the disclosure of information by the Attorney General.

C. The Attorney General's Office shall compile data on cigarette shipments from the applicable returns and shall share such data with other states that are signatories to the Master Settlement Agreement, as defined in § 3.2-4200, provided that such states impose protections against disclosure of the applicable returns, or any information from applicable returns, that are equivalent to the protections provided under subsection B. ~~No~~ Except as provided under § 58.1-3.2:1, no other disclosures of the applicable returns, or of information from the applicable returns, may be made by the Attorney General.

D. A tobacco product manufacturer who does not comply with the requirements of subsection B shall, after 30 days' notice by the Commonwealth to such tobacco product manufacturer of the compliance failure, lose its authority to sell cigarettes in the Commonwealth unless such tobacco product manufacturer has brought itself into compliance by the end of the 30-day period.

E. Any tobacco manufacturer or importer who intentionally provides any applicable return containing materially false information shall be guilty of a Class 6 felony. The provision of each applicable return containing one or more false statements shall constitute a separate offense.

F. The Attorney General may promulgate regulations to implement and carry out the provisions of this section.

**§ 58.1-3.2:1. Release of information relating to nonparticipating manufacturers.**

A. Notwithstanding any provision of § 3.2-4209.1, 58.1-3, or other law, the respective officers, employees, and agents of the Office of the Attorney General and the Department of Taxation shall share with each other and shall be authorized to disclose information collected by or reported or provided to them as provided in (i) the Master Settlement Agreement as defined in § 3.2-4200 or (ii) the Non-Participating Manufacturer (NPM) Adjustment Settlement Agreement entered into by the Commonwealth on October 10, 2017, and entered into by other states and leading United States tobacco product manufacturers.

B. Notwithstanding any provision of § 3.2-4209.1, 58.1-3, or other law, the Office of the Attorney General shall upon the request of a tobacco product manufacturer that has placed funds for a particular year into a qualified escrow account pursuant to subdivision A 2 of § 3.2-4201 provide to such tobacco

*product manufacturer a calculation that demonstrates in reasonable detail the amount of the release, if any, to which such tobacco product manufacturer may be entitled for such year under subdivision B 2 of § 3.2-4201. For purposes of this subsection, such reasonable detail shall include supporting documentation in the possession, custody, or control of the Office of the Attorney General sufficient to substantiate such calculation provided it does not reveal confidential information of any tobacco product manufacturer. Nothing in this subsection shall limit or expand a tobacco product manufacturer's rights or protections under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), or under the rules of discovery applicable in any proceeding challenging the Office of the Attorney General's determination whether a tobacco product manufacturer is entitled to a release under subdivision B 2 of § 3.2-4201.*

*C. Any records shared with or disclosed, reported, or provided to an officer, employee, or agent of the Office of the Attorney General or the Department of Taxation pursuant to the Master Settlement Agreement as defined in § 3.2-4200 or the Non-Participating Manufacturer (NPM) Adjustment Settlement Agreement entered into by the Commonwealth on October 10, 2017, and entered into by other states and leading United States tobacco product manufacturers shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).*

**2. That the provisions of this act shall not become effective unless reenacted by the 2019 Session of the General Assembly.**